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The Federal Reserve -Treasury Controversy

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:CENT EVENTS have brought into the nelight a long-standing divergency of ews among our monetary authorities ı the subject of interest rates. The ːderal Reserve has made an open eak with the U. S. Treasury Department, and has pitted its monetary rength against the political power of e Treasury in an effort to push up ort-term interest rates. This outbreak ɔes not represent a major departure ɔm the policy of maintaining low interest rates, but simply a minor dis-reement within the framework of at policy. This paper will first trace ents in the money market since mid-ugust and will follow this with a rvey of their background and an in-rpretation of their significance.

Setting of Recent Dispute

During World War II, the monetary ɔwers of the Federal Reserve were ed to maintain a structure of interest tes on government securities wherein e rate on long-term bonds did not e above 2½ percent and the rates on rious shorter-term governments were ld at very low levels in relation to at on bonds. The rate fixed for 3-ɔnth Treasury bills, for example, was ly ⅜ of 1 percent. For reasons to be scussed subsequently, the Federal Re-ve has desired to allow the short-m rates to rise, and in fact they have en allowed to rise appreciably at rious times since the middle of 1947. Until this past summer prior agreements had been reached between the Federal Reserve and the Treasury, whereas in recent weeks such has not been the case.

In mid-August, the Reserve Board sent to the Congressional Joint Committee on the Economic Report a "confidential" memo prepared by its staff, setting forth its views with regard to control of inflation in the present circumstances.[1] The gist of this memo was as follows:

(1) The threat of inflation is severe, and the major attack upon it must be through taxation. This should include broadened income tax levies, selective excise taxes to divert consumer demand from critical areas, and the plugging of certain unspecified loopholes.

(2) In addition to taxes, restraining the growth of private credit is of immediate importance. For this purpose selective controls over security credit, consumer credit, and real estate credit are useful, but taken alone would be insufficient. There must also be some degree of tightening through Federal Reserve open-market operations such as would allow increases in short-term interest rates.

(3) Such additional government securities as must be issued to meet any current deficit should be sold in so far as possible to non-bank investors.

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[1] This memo is reprinted in full in the *Commercial and Financial Chronicle*, August 31, 1950, pp. 6 ff.

Events Since Mid-August

The current dispute flared into the open on August 18. On that day the Treasury announced an offer of $13½ billion of 13-month 1¼ percent notes. These notes were offered to holders of securities maturing September 15 and October 1. This rate of 1¼ percent on 13-month notes represented (in the present scene wherein long-term rates exceed short-term rates) a slight reduction in interest rate, since 1¼ percent was at that time the going rate on 12-month maturities.[2] The Treasury was thus insisting upon no increase in the short-term rate.

The same day, following the Treasury announcement, the Federal Reserve Board announced its approval of a change in the rediscount rate of the Federal Reserve Bank of New York from 1½ percent to 1¾ percent, and in the same statement declared, "The Board of Governors of the Federal Reserve System and the Federal Open Market Committee are prepared to use all the means at their command to restrain further expansion of bank credit consistent with the policy of maintaining orderly conditions in the Government securities market."[3]

The inclusion of the qualification that action would be limited to that consistent with orderly conditions in the government securities market was sufficient to cast great doubt upon the strength of the Board's determination to restrain inflation, but at least this proclamation was a direct challenge to the action of the Treasury earlier in the day.

On August 21, Secretary of the Treasury Snyder issued a statement in support of his position saying, "We have an obligation of the highest order not only to maintain the finances of the Government in the soundest possible condition, but also to fulfill our responsibilities to the millions of Federal security holders throughout the nation. A stable and confident situation in the market for Federal securities is our first line of defense on the financial front."[4]

It seems completely safe to infer that by "responsibilities to . . . Federal security holders" the Secretary means not merely the contractual obligations to pay interest and to redeem securities at maturity, but also an assumed moral obligation to prevent declines in the prices of outstanding issues. Such stability in interest yields on government securities is what the Secretary means by "a stable and confident situation."

Meanwhile the Federal Reserve was beginning to exercise its influence in money markets so as to implement its desire for higher short-term rates. In the five weeks from August 16 to September 20 the Reserve sold, or allowed to mature unreplaced, over $7 billion of some types of government securities while purchasing approximately the same amount of other types of government securities.[5]

The $7 billion of securities acquired by the Federal Reserve consisted ex

[2] W. C. Bryant, "Federal Reserve Dilemma," *Wall Street Journal*, August 24, 1950, p. 3.

[3] *Federal Reserve Bulletin*, September, 1950, p. 1110.

[4] *Commercial and Financial Chronicle*, August 24, 1950, p. 5.

[5] See National City Bank of New York *Monthly Letter on Economic Conditions and Government Finance*, October, 1950, p. 113 for a more detailed account of these operations than is given here.

usively of the 13-month notes which ıe Treasury had offered in exchange ır the bonds and certificates maturing eptember 15 and October 1. Between ıid-August and these maturity dates, ıe Reserve had offered par for the ıaturing issues, and had been able to urchase them from banks and the ublic in large volume. When the ma- ırity dates arrived the Federal Re- rve had exchanged these securities ır the new issues — on the Treasury's rms!

About half of the $7 billion decline ı holdings of other government securi- es in these weeks consisted of Treasury ills which were allowed to mature un- placed. Most of the remainder were rtificates and notes which will mature ithin a year, and which were sold by ıe Reserve to the banks and the pub- c. These were offered for sale by the eserve at cut prices, such as to give ıem yields to maturity which were eater than those on either the ma- ıring securities or the new 13-month otes which the Treasury had offered ı exchange for the maturing securities.

In these circumstances it was profit- ɔle for other holders to sell out the aturing securities to the Federal Re- rve and purchase the securities which ıe Reserve was selling at reduced rices, rather than to hold the maturing curities until September 15 or Oc- ber 1 and exchange them for the reasury's new issues. Such shifting ıerefore took place on a large scale. ntil it became clear that the Reserve as going to buy the maturing issues eely and itself exchange them for the w issues, it had seemed possible that holesale demands for cash might force the Treasury to offer substitute issues at higher yields, or to seek a direct emergency loan from the Reserve. As it turned out, by the time they matured the Reserve Banks had acquired over half of the issues to be refunded and did exchange them for the new notes.

Many holders of maturing securities who did not sell out to the Federal Re- serve prior to the maturity dates re- fused the new notes and demanded re- demption in cash. Thus 17 percent of the maturing securities were paid off in cash, as compared with a usual 5 to 10 percent. Treasury cash holdings were sufficient to meet these cash re- demptions without emergency meas- ures, and thanks to the direct support of the Federal Reserve the new issue of 13-month notes did not fail. The Federal Reserve had brought about a situation in which the banks and the public did not care to purchase the en- tire refunding issue, but had proceeded to moderate the pressure upon the Treasury by purchasing a large part of the issue itself.

In thus outbidding the Treasury as a seller of government securities to the banks and the public, the Federal Re- serve had sustained a small capital loss upon the securities it sold. This loss, however, will be at Treasury expense, since the excess earnings of Federal Reserve Banks are periodically turned in to the Treasury. What the Treasury saves on interest charges by having sold its issue of 1¼ percent notes it will in large measure lose because of the decline in its incidental revenue from Federal Reserve excess earnings.

There was another aspect of the large-scale open-market purchases and sales in which the Treasury did not get

off even this easily. This aspect concerned rates on 3-month Treasury bills. Such bills are offered weekly, for sale to the highest bidders, with bids placed by the Federal Reserve Bank of New York ordinarily influencing the market heavily. The Reserve Banks allowed over $3 billion of their holdings of such bills to mature unreplaced in the five weeks beginning August 16.

Each week the Treasury accepted bids for about $1 billion of bills, this being necessary in order to redeem maturing bills. But as the Federal Reserve withdrew as a purchaser (probably by making bids which were so low as not to be accepted), it became necessary for the Treasury to accept lower bids by the banks and the public. Thus the average yield on accepted bids rose steadily from 1.17 percent in mid-August to 1.32 percent for the issue of September 18. This latter rate was the highest on 3-month bills since 1933, and higher than anything the Treasury had offered on maturities under four years since before the war.[6] It was also, significantly, above the 1¼ percent offered on the 13-month refunding notes previously discussed. Whereas the Reserve had failed to enforce higher rates to the Treasury on the new issues of 13-month notes, it had brought about higher rates on 3-month bills.

When the refunding operation of September 15 and October 1 had been completed, a lull settled upon the financial battlefield. Open-market government security holdings of Federal Reserve Banks changed little in the first half of October, and yields on Treasury notes were held at the level produced by Federal Reserve sales during the pre-refunding period. As this paper is being written there are some indications of further increases in various short-term rates.[7]

Background of Security Price Supports

The maintenance of "orderly conditions in the government securities market" had become a part of Federal Reserve policy in the immediate pre-war period, and has been the primary objective of Reserve policy since the early war years. Like other historical objectives of Reserve policy, such as "accommodation of business" and "sound credit conditions," the "maintenance of orderly conditions" was not unequivocally defined, and thus reserved to the authorities much latitude in day-to-day operations.

In the early war period the maintenance of orderly conditions was taken to imply the preservation of a particular pattern of long- and short-term rates which had been in existence at the initiation of the policy. This pattern fixed the rate on 90-day Treasury bills at ⅜ of 1 percent, the rate on 12-month certificates at ⅞ of 1 percent, and the rate on longest-term taxable bonds at 2½ percent. The pattern was maintained by virtue of the readiness of the Federal Reserve to buy and sell securities of the various types at prices which would produce the prescribed yield to maturity.

Throughout the war this rate structure was maintained in spite of the practice which developed of "playing

[6] *Wall Street Journal,* September 13, 1950, p. 6; September 20, 1950, p. 7.

[7] Joseph R. Selvin, "FRB Permits Rate Boosts in Short Terms," *Journal of Commerce* (New York), October 19, 1950, pp. 1 ff.

e pattern of rates." To avoid any rge-scale recurrence of this activity apparently one of the purposes for ıich the Federal Reserve now wishes gher short-term interest rates. By ›laying the pattern of rates" is meant e action of banks and non-bank instors in selling out short-term government securities to the Federal Reserve order to purchase the higher-yieldg long-term securities. Existence of ›nd price supports gives long-terms much liquidity as short-terms, and the banks and the public tend to ncentrate upon the former in order earn greater interest. Thus during e war years, after 1942, the great inease in the open-market portfolio of e Federal Reserve came about wholly rough expansion of Reserve Bank ›ldings of short-terms, there being oderate decreases in their holdings long-terms.

Since the end of the war no sigficant change has occurred in the ›licy of supporting the prices of ıgest-term government securities at ch levels as restrain their yields from ing above 2½ percent. There have, wever, been compromises between e Federal Reserve and the Treasury ıich have permitted increases in the tes on shorter-term government obations. In July, 1947, the support Treasury bills at ⅜ of 1 percent was andoned, and in August of the same ar the support of certificates at ⅞ 1 percent was discontinued.

In each case the action was folwed by assurance that the Reserve stem was not abandoning its objece of maintaining orderly conditions the market for government securis. The concurrence of the Treasury in these actions was manifested by a gradual increase in the rate on newly issued certificates. Then in December, 1947, the Open Market Committee allowed a small decline in support prices for long-term issues, but continued to maintain the "pegs" at the slightly reduced level. Long-term rates have fallen below 2½ percent at various times since, but have not been allowed to rise above 2½ percent.

Relation of Bond Price Supports to Inflation

The officials of the Federal Reserve are by no means unaware that the policy of holding down interest rates on government securities forces them to forfeit the use of open-market operations in these securities as a means of monetary control. They have repeatedly emphasized this truth to Congress, and have requested authority which they believed would in some measure substitute for the powerful tool of open-market operations. An understanding of the significance of bond price support is so important to this general problem, however, that it deserves at least brief summary here.

Governor Eccles of the Federal Reserve Board has been reported as saying, "It is impossible to make money cheap to the government without making it cheap to everybody." Why is this so? The government debt now stands at more than $250 billion, of which about $200 billion is held by banks, other financial institutions, and other non-bank holders. So long as the Federal Reserve Banks support government security prices at par, or at prices so near par as to produce low yields to maturity, the cost of "money" to

holders of such securities cannot be greater than the yield sacrificed by selling them. Since many of the holders, such as banks and insurance companies, play a role of lender in the economic scene, cheapness of money to them is certain to be reflected in cheap money for the great mass of borrowers. Moreover, every purchase of securities by the Federal Reserve Banks, whether from the commercial banks or the public, adds an equal amount to the reserves of member banks, increasing by severalfold the potential secondary expansion of bank credit.

Unfortunately, it is precisely in periods of inflationary pressure — periods in which traditional open market policy would have dictated *sales* of government securities from the Federal Reserve to the banks and the public—that the bond price support policy compels the Reserve Banks to *purchase* securities in large volume. In fact, the rate of offerings of securities to the Reserve Banks would be a measure of the severity of the inflation under way.

Whether or not there is a bond price support policy makes no great difference in a period during which no appreciable inflationary pressures are present, for in such periods the prospective profits from private investment expenditures (and prospective advantages to consumers in "buying now" to pay later) are not especially large. Thus the demand for loans and for capital funds through security issues may well be taken care of by current individual and business savings. No downward pressure upon government security prices will exist in such a case, and no purchases by the Federal Reserve will be necessary to implement the price-support policy.

In a period of inflationary pressure on the other hand, an abundance of private investment opportunities will appear highly profitable. Economic activity and business expectations will be stimulated. Let it be remembered, moreover, that if prices are rising at a rate of, say, 10 percent per year, then it will be profitable to borrow for investment in inventories at any rate of interest which is just enough below 10 percent to allow for other costs of carrying the inventories. Also, in a period of inflation, the prospective advantages to consumers of speeding up purchases by borrowing will increase.

Individual and business holders of government securities will thus tend to sell them, having to sacrifice only a low yield to do so, in order to increase purchases of consumer or capital goods. Financial institutions, such as insurance companies, will be likely to sell out government securities and to purchase real estate, mortgage paper, or other profitable private obligations. Similarly, the commercial banks will meet increasing requests for loans by their customers by the simple expedient of exchanging some of their large holdings of governments for reserves at the central bank. The more extreme become the inflationary pressures, the more purchases will the Federal Reserve be obliged to make in order to prevent yields on governments from falling, and the more fuel will thus be added to the inflation.

The existence of price supports prevents sellers of government securities from suffering any capital loss upon their sales. In effect, all government

:urities become perfect money substi- tes to their holders, and bank hold- gs of governments become essentially :cess reserves. The Federal Reserve, stead of selling on the open market reduce bank reserves and the money pply, finds itself buying on the open arket. Under these circumstances the onetary authorities, denying them- lves the use of their powerful weapon open-market operations, must at- mpt to restrain inflationary credit ex- nsion by the much less effective ethods of selective controls, moral asion, and alteration of reserve re- iirements applying to commercial nks.

Monetary versus Political Power

The current dispute is one in which e concentration of legal and technical wer lies with the officials of the deral Reserve, but in which political wer is largely on the side of the easury. Under the Federal Reserve :t the Open Market Committee is by means compelled to grant or pro- le to the Treasury such interest rates its obligations as the Treasury de- es, or even for that matter to pur- ase any Treasury obligations what- er. The bond price support policy d the maintenance of any particular e structure have been, therefore, itters of voluntary choice with the icials of the Reserve System, albeit choice substantially influenced by easury desires.

Treasury influence is very strong, wever, because of the closer contacts the Secretary of the Treasury with : Presidential circle, and also because general public is more easily im- ssed by an argument for maintaining bond price supports to protect bond holders from capital losses and to hold down interest charges on the national debt than it is by the more complex relationship between low interest rates and inflation. In wartime it would have been almost unthinkable for the Reserve to take any other course than furnishing an unlimited market for government securities, since not to have done so would have made it subject to the accusation of withholding support from the war effort.

At the present time this is only a little less true. Suppose, for example, that the Federal Reserve had followed its boosting of short-term market rates of interest with an outright refusal to purchase the 1¼ percent 13-month notes offered by the Treasury, and had instead demanded cash redemption of its $7 billion of maturing securities, thereby forcing the Treasury to substitute a higher-yield refunding issue. In such a case it seems very probable that the Reserve's action would, with the encouragement of Treasury officials, have been treated in most of the public press as the behavior of a Shylock. The Reserve would have been accused of attempting to destroy the credit of the government and of working unfair harm upon holders of government securities.

That inflation, which diminishes the purchasing power of the dollar, is much more harmful to holders of government securities than is a capital loss which may be recovered by the simple expedient of holding the securities until they mature; and that permitting the Treasury unlimited access to Reserve Bank credit on the Treasury's own terms is virtually the economic equivalent of

setting the Treasury free to issue greenbacks in unlimited amounts — these are facts which most of the press and the public would overlook. Nor would they be brought to public attention by an administration engaged in deficit financing. One must therefore sympathize with the Reserve officials (whether or not he agrees with them) when they exhibit great political restraint even at the expense of neglecting monetary restraint.

Interpretation of the Current Dispute

One can hardly escape the belief that the present controversy is much affected by considerations of prestige and personal influence. One commentator reports a feeling of some observers in Washington that if Secretary Snyder had only offered *12-month* notes at 1¼ percent the Federal Reserve would have gone along with him, even though against its wishes.[8] That he offered instead *13-month* notes at this same rate—equivalent to a slight reduction in rate — may have been regarded by the Reserve officials as a final affront sufficient to warrant an open challenge. The Federal Reserve, having largely given in to the Treasury in the war and postwar years, may have felt increasingly the urge to assert its statutory independence so as to convince others, and perhaps itself, that it was not a mere handmaiden of the Treasury.

The dispute is not, however, without its vital economic aspects. The reality of the inflationary threat, as manifested by the rise of nearly $2 billion in loans and investments of weekly reporting member banks since mid-June, and by the rise in the wholesale commodity price index from its 1949 average of 155 to nearly 170,[9] is disputed by neither side. The focus of disagreement, of course, concerns methods to be used in fighting inflation. It is very clear that the Federal Reserve has not reached — or even closely approached — a willingness to abandon price supports on long-term securities. All the major personalities on both sides of the dispute have publicly proclaimed the view that preventing the long-term rate from rising above 2½ percent is desirable,[10] and there has been no indication in recent weeks of any change in that viewpoint. The issue is not, therefore, whether the policy of low interest rates shall be abandoned. It is rather one of whether the rates on short-term securities shall be allowed to rise further toward the 2½ percent maximum on long-term securities — that is to say, whether the upward adjustment of short-term rates which began in 1947 shall be continued.

It is pertinent to ask why the Federal Reserve authorities feel it necessary to allow these short-term rates to rise while at the same time they make no move to boost the long-term rate. A hint as to the answer lies in the concluding paragraph of the recent memorandum by the Federal Reserve staff to the Congressional Joint Committee on the Economic Report:

[8] W. C. Bryant, "Money Squabble," *Wall Street Journal,* August 28, 1950, p. 5.

[9] *Survey of Current Business,* Weekly Supplements, June 16 and October 13, 1950 and *Federal Reserve Bulletin,* September 1950, p. 1239.

[10] Lester V. Chandler, "Federal Reserve Policy and the Federal Debt," *American Economic Review,* March, 1949, pp. 413-416.

xperience of the last war . . . showed at the maintenance of short-term rates at level substantially below long-term rates a great encouragement to the shifting of vernment securities, as they approach aturity, to banks and then to Federal eserve Banks. Another situation of this rt should be avoided as it is an inducement rather than a discouragement to government financing through the banks. Such situation is highly inflationary in character.[11]

This quotation refers to the practice "playing the pattern of rates," which s been discussed previously. The fact at long-term security prices are supported makes these securities as liquid are short-terms, thus discouraging lders other than the Federal Reserve elf from keeping the latter. Short-rms gravitate to the Federal Reserve, ile long-terms become concentrated the hands of the public and the commercial banks.

The authors of this quotation, more-er, believe that there are effects not erely on the type of government curities held by the non-bank public, t also that the aggregate holdings of vernment debt by the non-bank pub- are less than they would otherwise . That is to say, if short-term rates e closer to 2½ percent the public will t only hold more short-term government securities but also a greater nount of all kinds of government curities combined.

This view is subject to doubt. It is fficult to see, for example, how Treas-y notes paying, say, 2 percent, would tract any appreciable volume of non-nk purchasers who would not already ve been even more attracted by the continuously available price-supported bonds paying 2½ percent. Be that as it may, it is apparently a desire to see short-term government securities become as attractive to non-bank investors as are long-term governments which prompts the Reserve to push for higher short-term rates.

Even granting that higher short-term rates, if achieved and maintained, would encourage non-bank financing of government deficits, it is nevertheless apparent that this action would by no means suffice to prevent monetary expansion in the face of anything more than a very moderate inflationary prospect. With long-term rates pegged at 2½ percent and short-term rates at something less than 2½ percent, the present low-interest structure of the economy would remain essentially intact. All the arguments previously discussed as to why cheap money for government means cheap money for everyone would certainly continue to apply.

Who appears to be winning this controversy? Yields on Treasury bills are not likely to decline to the pre-August level while the current inflationary threat continues, and in view of the ability of the Reserve to repeat its performance in underselling the Treasury's note issues it seems probable that if notes are issued to refund securities maturing in December these notes will bear a rate slightly above 1¼ percent. If this is all the Federal Reserve wants — and we have had no clear indication of just how far the Reserve wishes short-term rates to rise — then it is winning the contest. If, on the other hand, the Reserve wants short-term rates to rise markedly, say to levels

[11] *Commercial and Financial Chronicle*, gust 31, 1950, p. 16.

above 2 percent, then the predominance of political power on the part of the Treasury will probably win out in this public dispute, as it has in the quieter councils of war and postwar years. The unwillingness of the Federal Reserve to take an all-out tight-money viewpoint, and even to force the Treasury's hand by refusing to purchase the recent 13-month refunding issue, suggests the likelihood of a compromise i which short-term rates will be increase very little. Any compromise which th Reserve makes in this regard it can c course readily rationalize as bein necessary to the maintenance of orderl conditions in government securit markets.

The Progressive Miners of America*

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RING THE United Mine Workers' ike of 1950, the American press fre- ently mentioned the fact that mem- rs of a rival union in Illinois were ntinuing to hoist coal. The Progres- e Mine Workers of America, with proximately 9,000 working members the state, did not call its men on ike when John L. Lewis ordered ore than 400,000 members of his ion to leave the bituminous mines. stead the Progressives continued rking until the end of the strike was view and then struck for only eight ys. No sooner had Lewis's representa- es signed a contract with the Illinois al Operators' Association, however, an the officers of the Progressive ners concluded a very similar agree- nt with another trade association, Coal Producers' Association of Illi- is. The spotlight of the press omptly shifted elsewhere, and for the st year the Progressive Mine Workers ve not received more than local com- nt from the press.

This interval of publicity for the IW, brief as it was, reemphasized whole question of the relationship ween competing unions. Existing e by side in Illinois since 1932, what ht can these two unions throw upon topic of rival unionism? What does experience in Illinois before 1932 eal about conditions which account for the secession of members from a mature union? What techniques have the two unions used in their prolonged struggle for power since 1932?

The United Mine Workers of America was the only union in the coal fields of Illinois for more than forty years — 1890 to 1932 — and was the miners' only representative for purposes of collective bargaining. This complete monopoly was destroyed in 1932 when malcontents within the union split off and formed a separate union, the Progressive Miners of America.[1] Analysis of events leading up to this break indicates that it was due to the corrosive effects of internal dissension. Festering for a decade before 1932, bitter feeling against the officers of the union found no constructive outlet and resulted in a permanent cleavage among the miners.

This loss of faith in the officers of the UMW had at least two main causes, both of which will be discussed in this article. First, the officials, quarreling among themselves almost continuously since 1925, had done all in their power to discredit each other in the eyes of the membership. Second, the officers had not been able to check a persistent decline in the miners' earnings; and the men therefore felt that the officials had failed in their major responsibility to the membership.

* This is the first of two articles on the gressive Miners of America, hereinafter rred to as PMA. The second will appear he next issue.

[1] The Progressive Miners of America changed its name to Progressive Mine Workers of America when it affiliated with the American Federation of Labor in 1938.

Lewis Versus District Leaders

The person most prominent in the quarrels among the officers was the international president, John L. Lewis. When he took office in 1920, the membership in Illinois was the keystone of the organization. Coextensive with the state of Illinois, District 12 of the UMW had more than eighty thousand members, most of whom were well-disciplined, experienced trade unionists. The union enjoyed a closed shop in the shipping mines of the district.[2]

The UMW required as its district president in Illinois a man of outstanding ability. On the other hand, such a leader always constituted a potential rival to Lewis, who was wary of having a subordinate whom he could not control. The balance of power between a union president and the lesser officers of the organization becomes increasingly difficult for him to maintain as a union grows in membership. This is true because physical limitations upon the work which one man can do force the president of a powerful union to place large responsibilities on the union's other officers. An elected officer who is able to handle well a major segment of the union is apt to want to make decisions independently of any central authority. The probability of disagreement within the union and the consequent possibility of revolt are therefore forever present in a large union which is democratically controlled. President Lewis has used wide discretion in side-stepping democratic processes in order to assure himself the full cooperation of his officers. To them he delegates responsibility only for implementing his own policies; he does not allow deviation from the pattern which he marks out.

In successive attempts to stem possible revolts in Illinois during the twenties, Lewis did all he could to combat the popularity of men elected to the presidency of the district. In 1926 he was able to force out of office the district's very capable president, Frank Farrington, by publishing evidence that this man had signed a contract to work for the state's largest operator.[3] The vice president, Harry Fishwick, succeeded Farrington. Three years later Lewis accused him of misappropriating funds of the district.[4] These two moves by Lewis were exceedingly adroit politically in that both could be interpreted as measures for the protection of the rank and file. With divergent sympathies in each of these cases, the union's members in Illinois were unable to agree for many years as to the relative trustworthiness of the officers of the district and of the international union.

When Fishwick refused to resign Lewis countered with a move to appoint his own "provisional" officers to take over control of District 12. Fishwick sought court protection and obtained a court injunction which forbade the international to interfere with the control of the district but left the parent organization with all other powers granted by the UMW's con

[2] The term "shipping mine" applies to a mine which ships its product beyond a strictly local market. It is contrasted with the "local mine," which sells only within the immediate vicinity.

[3] The contract was reprinted in *United Mine Workers Journal,* September 15, 1926, p. 1. The *Journal* is the official publication of the international union of the UMW. In subsequent footnotes it appears as *UMWJ*.

[4] *UMWJ,* November 15, 1929, p. 5.

tution. The injunction formalized the ationships actually prevailing in Dis-ct 12, where the Illinois Coal Opera-:s' Association was dealing with the strict's regularly elected officers as the rsons responsible for the fulfillment the contract between District 12 and e Association. The employers had not cognized the group of officers whom wis had named to replace Fishwick's gime; and the Lewis appointees erefore were unable to function in e state. Although Lewis was thus gally barred from the district, he had successfully discredited Fishwick by accusations of corruption that the embers elected a new president of strict 12 in 1930. This was John alker, formerly president of the Illi-is State Federation of Labor.

Efforts to Bore from Within

Restive under the court's unstable mpromise, a group of Illinois miners 1931 attempted to set up a reform ganization to be called the Rank and le Miners of District 12, United Mine orkers of America. This group func-ned for only six months, but it is nificant because in several respects it the pattern for the more successful volt which created the Progressive iners of America a year later. For ample, towns which were strongholds the Rank and File Miners were soon be centers of enthusiasm for the IA. Some officials in the Rank and e were to hold top office in the ogressive union. The miners' de-mination to create a more demo-tic government for their union found pression in identical phrases in the o constitutions. For example, restrictions were placed on the officers' powers of appointment, and after a man had had one term in office he was to return to work "in or around the mine" before being eligible for reelection. Although this group disintegrated when its president withdrew, the hatreds and mistrust which had created it were persistent, and these continued to threaten the security of both Walker and Lewis.

Thus it was that during the late twenties the miners of Illinois learned to distrust the officers of both the district and the international union, UMW. If either group of officials had been able to build up a strong sense of loyalty among the rank and file, presumably there would have been support for the union in the difficult days of the thirties. Each group, in attempting to discredit the other, had helped to prepare the ground for revolt.

An appraisal of the causes for secession from the UMW reveals that the political tensions within the union were only one of two major factors. A second cause for the miners' loss of faith in their officers was a decline in earnings. Since the turn of the twentieth century the coal miners of Illinois, Indiana, Ohio, and Pennsylvania had worked under a series of union-management contracts. Representatives of the United Mine Workers had negotiated these contracts periodically with spokesmen of the operators' associations throughout this four-state region, known as the Central Competitive Field. The union's theory of wages included the concept that producers' costs should be as uniform as possible, in order to equalize competitive advantage among the dif-

ferent mines.[5] Therefore the UMW had allowed employers' associations in the individual states to introduce some variations in wage rates within a range slightly below and above the basic scale of the entire field. For example, the Illinois Coal Operators' Association had been free to work out with representatives of the miners of District 12 the deviations which would be recognized officially in Illinois. Subdistrict officers then had established the modifications necessary to fit local needs.

"No Backward Step"

In the mid-twenties the UMW could point with pride to its record of uninterrupted wage increases for its members working under collective agreements in Illinois. It had raised the basic rate to more than four times the amount paid at the turn of the century. The union's hold over its members in District 12 can be understood only in the light of the officers' success in pushing up the pay scale. The union itself had constantly educated its members to believe that to remain in good standing in the union was the way to assure oneself of getting higher wages.

President Lewis refused to be moved by the operators when they insisted in 1924 that postwar readjustments made it impossible for them to continue paying the wartime rate of $7.50 per day. His ultimate success in getting producers in the Central Competitive Field as a whole to sign a renewal of that rate was a Pyrrhic victory, for producers in Pennsylvania, Ohio, and Indiana straightway began to operate nonunion, in an attempt to lower their costs. Lewis's policy of "no backward step" destroyed the Central Competitive Field as a unit for collective bargaining. He later stated that the UMW had spent more than $8 million to maintain and support its striking and locked-out members during the four years ending December, 1928.[6] Nonunion mines in West Virginia and Kentucky meanwhile took over an increasing share of the bituminous coal market.

Although an ever larger proportion of bituminous output came from nonunion mines, Lewis held stubbornly to his policy of "no backward step" for mines remaining under union contract. This meant in effect that the Illinois Coal Operators' Association was the only major organization of employers still paying the old wage rate. In an interval of four years — 1924 to 1928 — they had seen their output drop by one-fourth.[7] Because mechanization aggravated the effect of lost markets, the number of employees had declined by one-third.[8] Lewis at last was convinced that further resistance to wage cuts in District 12 would result inevitably in disastrous loss of jobs for his members. He accepted the operators' verdict that wage scales must be cut.

President Lewis grossly underrated the effectiveness of his previous propagandizing among the miners. Men who

[5] For an excellent discussion of the United Mine Workers' position see Waldo E. Fisher, *Collective Bargaining in the Bituminous Coal Industry* (Philadelphia: University of Pennsylvania Press, 1949).

[6] *UMWJ*, February 2, 1932, p. 11.

[7] Computed from Illinois Department of Mines and Minerals, *Coal Report*, 1936, p. 27.

[8] *Ibid.*

d listened to his insistence that no nited Mine Worker need take a ackward step" in the struggle for gher wages were slow to unlearn that sson. The men naturally found it sier to believe that wages could be ised than that they had to be lowered. ithout question, a significant criterion the stature of any union officer is s ability to recognize the necessity r a wage cut in organized plants, ıen that necessity does arise. A willgness to jeopardize his popularity th his members by telling them to ke a wage cut is perhaps even more dicative. Lewis tardily took both ese steps in 1928. A referendum in strict 12, following an intensive camign by district as well as international ficers, brought a narrow majority of tes in favor of accepting the cut. wis's margin of personal victory in inois had been small.

The miners' experience under the w wage scale ($6.10 per day for the sic rate) was disastrous. The union's icers had assured them that a wage t would stabilize employment. Inad, the men faced an unprecedented ortage of jobs. The average number days worked per year fell below 28's paltry count of 132, and the erage number of men employed in inois mines declined by almost oneth in the three years ending in 1931.[9] secular and technological causes of employment now were added cyclical ctors also.[10] The miners' last remnant of confidence in their district officers disintegrated, but they were not in agreement on the question of whether District 12 would have fared better if its officers had not shut Lewis out of Illinois by court injunction in 1930.

Wage Negotiations in 1932

Since taking their first "backward step" in 1928 the miners of Illinois had learned from experience that a wage cut would not automatically increase employment. And so in 1932 they told their officers to accept no cut in rates of daily pay and to demand a major reduction in the length of the work week. District President Walker dutifully carried these requests into joint sessions with representatives of the Illinois Coal Operators' Association, but the operators countered with a proposal for a 30 percent wage cut and no change in hours. Compromise proved impossible, and the mines closed down on April 1, 1932, for lack of a contract.

Weeks of intermittent negotiating finally induced the men on both sides of the bargaining table to make major concessions. When the union submitted these proposals to the membership for approval by referendum, the rank and file let forth vociferous protest. The men refused to believe that the proposition was the best one obtainable. Their resistance was stiffened by their

Illinois Department of Mines and Minls, *Coal Report,* 1936, p. 27, Table 8.

[10] Whereas only 13.5 percent of the tonge mined in Illinois in 1928 was loaded chanically, 61.4 percent of the output s so loaded in 1931 (*ibid.,* 1932, p. 13). nveyors accounted for slightly more of this tonnage than did loading machines (*ibid.,* p. 92). The percentage of the output undercut by machine rose from 82.7 to 89.2 in this interval of three years (*ibid.,* p. 86). A further change in technique was the rapid introduction of strip mining, with its more efficient use of manpower. Of total tonnage produced in Illinois 1.7 percent was stripped in 1924, 7.6 percent in 1926, and 15.2 percent in 1931 (*ibid.*).

belief that the employers' ability to pay the old rate was proved by many companies' having continued to operate during the strike under temporary extensions of the $6.10 scale. On July 16, the referendum showed more than a two-to-one vote against the new contract. This refusal to return to work at reduced wages is the more significant in the light of the very real privations which the miners had endured throughout the strike. Almost none of them had had any reserve of savings to fall back on, and only the availability of direct assistance from the Illinois Emergency Relief Commission staved off unbearable privation. Walker had failed miserably in his responsibility to persuade his members that such wage cuts were necessary.

Under the laws of the district, there was only one way for President Walker to end the shutdown: he had to obtain from his membership its approval of a scale which had been accepted jointly by the operators and the union's scale committee. He saw nothing more that he could do to formulate a contract which the miners of Illinois would accept. Thus checkmated, he requested help from Lewis, whom the Fishwick injunction had prevented from taking any leadership in previous negotiations.

A week after the miners had rejected the $5.00 scale, the union and the operators resumed negotiations. This time the international union was represented by John L. Lewis and William J. Sneed, a former vice-president of the district. The group altered a few details of the proposed contract but left unchanged the tonnage and day-rate structure which the rank and file had so recently rejected.[11]

Officers of District 12 and of the international campaigned throughout the coal fields of the state, urging acceptance of the contract. The tenor of Lewis's arguments can be inferred from an open letter which he addressed to the miners of District 12 on August 2, 1932:

> [If the miners of Illinois] elect to do so they can vote to accept this agreement as being the best obtainable under existing conditions and thereby preserve the union and enable themselves to live until conditions improve and their wage losses are regained. On the other hand, the mine workers of Illinois, in the referendum, can elect to reject the agreement, and thereby strike down and destroy every vestige of collective bargaining in the coal industry of the state and begin an economic adventure that will dissolve their union and make of themselves helpless individuals, without economic status or influence.[12]

Feeling ran high among the miners. The suspicion with which the men viewed their own officers was so great that the local forced District President Walker to allow "watchers" to oversee the counting of the ballots at district headquarters. As if in final warning that it would brook no opposition, the international at this time removed from office the president of a large local in West Frankfort, giving as cause his no longer being employed at the mine over which that local had jurisdiction. The *United Mine Workers Journal* commented that the man had been guilty also of taking "an active part in meetings opposing International

[11] *UMWJ*, August 1, 1932, p. 4.
[12] *Ibid.*, August 15, 1932, p. 9.

esident John L. Lewis" and of fight-
g "the new wage scale proposal."[13]

A Period of "Emergency"

No sooner had the balloting been mpleted than "watchers" thronged to Springfield to oversee the totaling the count indicated on the tally eets which the locals had returned to e district offices. These sheets were aced overnight in a near-by bank, and the following morning disappeared route from the bank vault to the ion's offices.[14] That the theft had the proval of the union officials who had bmitted the proposal to the rank and e can hardly be questioned, inasmuch they made no attempt to obtain the plicate tally sheets still in the hands the locals. The miners were quick to lieve that President Lewis had ma- uvered the theft directly, and indig- tion flamed throughout the district. Asserting that "in such cases miners' icials are empowered to act as they e fit,"[15] President Lewis moved to nsummate the agreement with the inois Coal Operators' Association be- re the miners would organize venge- ce for the theft. He immediately lled a meeting of the district execu- e officers, members of the miners' ge-scale committee, and officials of e Illinois Coal Operators' Association. late afternoon of that day, August , these men had signed an emergency ntract, to be in effect until April 1, 1933. The contract was the one which had been submitted for referendum on August 8 and differed in only minor details from the one rejected by the miners in the referendum of July 16.

The Peabody Coal Company, the state's largest producer, recalled its men to work as soon as the new contract was signed, and various other companies shortly followed its example. In this way these operators seized the initiative before the miners could organize opposition. In most cases, a full crew reported promptly. It is probable that in many communities a man's response was due less to his being genuinely in agreement with Lewis's decision than to his knowing that any vacant work place could be filled instantly from the ranks of the unemployed.[16] Under the automatic penalty clause of the UMW's constitution, the union had power to replace any man who remained away from the pit for longer than three days without justifiable cause. District 12 was not apt to call rejection of the new contract an adequate excuse.

There was no basis for Lewis's contention that the loss of the tally sheets had created a genuine emergency. The totals already recorded in the district office, plus the unofficial counts which had appeared locally in newspapers of mining communities, showed indisputably that a majority of the miners had rejected the proposal. The import of the vote, not the loss of tallies yet to be totaled, moved Lewis to take the

[3] *Ibid.*, p. 1. The deposed president was n to become an active organizer for the ogressive Miners of America.

[4] The union's account appears in *UMWJ*, gust 15, 1932, p. 8. The thief was not prehended, and therefore no court found one guilty of the deed.

[5] *Ibid.*

[16] This opinion is substantiated by the fact that men returned to work in largest numbers in those counties where the highest percentage of votes had opposed a wage cut in the referendum of July 16.

initiative into his own hands. With good reason he feared permanent loss of markets for Illinois coal if the men in District 12 did not return to the pits without further delay; furthermore, they must accept a scale of wages which would allow their employers to compete in the national market. During the strike, consumers who normally bought union-mined coal from Illinois had had an ever-increasing proportion of their needs supplied from nonunion fields, where production had continued uninterrupted. One large company alone had been buying half a million tons of coal a month from out-of-state mines to fill contracts which it normally satisfied with coal mined in Illinois. The union itself was desperately in need of returning the miners to work because only a working member pays dues and the organization was on the verge of bankruptcy for want of revenue.

During succeeding months, the anti-Lewis faction in the UMW staunchly maintained that there had been no emergency to justify the international president's assumption of power. It stressed the fact that demand for American coal is at a minimum during summer months. It insisted that the agreement signed on August 10 was not a binding contract between the operators and the miners of Illinois, because the latter had not authorized their representatives to accept the wage cut. Lewis's understanding of long-term economic conditions in the industry was sound, but he had done very little better than Walker had in selling his membership the idea that operators in Illinois must be allowed some relief from their labor costs, which were disproportionately high as compared with those of producers in nonunion fields. The men continued to want to believe that "no backward step" was necessary. The miners' revolt against their "emergency" agreement and their officers was to have results both lasting and far-reaching.

The men who had struck on March 31 were not the only miners who were directly interested in Lewis's decision. Thousands of men who had been dropped from the payrolls at the mines of Illinois after the boom demand following World War I had continued their membership in the UMW.[17] Each waited hopefully for a job in the mines, a job to which his union card would entitle him if an opening came; each man knew that if he were to die before he found another chance to work as a miner, his union would not pay a death benefit for his burial unless he had kept up his membership.[18] These unemployed miners constituted a huge group which so deeply resented their own helplessness in the face of widespread unemployment that they welcomed any opportunity to express their hostility to their union, which they felt should have protected their jobs. Like the strikers, they were under no obligation to report for work, and therefore could take part in mass activities to a degree that obviously is impossible in a period of full employment. Being

[17] The number of men employed in the coal mines of Illinois had dropped from a high of 103,566 in 1923 to only 51,544 in 1932 (Illinois Department of Mines and Minerals, *Coal Report*, 1936, p. 27).

[18] The UMW exonerates the striking or unemployed member from the payment of dues, if the miner files a monthly request for such exemption.

ırt of a group which had a positive rogram for improving the miners' contion brought satisfying release for ent-up emotions which the individual iner could do nothing to channel conructively. In such fertile soil, expreson of ill will against the UMW ushroomed overnight.

Refusal to Follow Lewis

Throughout the state miners held ass meetings to protest the emergency ontract's being put into effect. Alough men at one of these meetings ent so far as to decide that a conveneon of all miners in Illinois should be lled immediately, they did not take tion to break formally with the MW. A direct result of such gathergs was the organization of mass picket nes to halt operation of those mines hich had reopened immediately after e signing of the $5.00 scale. On some casions these picket lines were made of men and women from a radius more than one hundred miles. They ere able to stop men from continuing ork in mines so widely dispersed as in andolph and St. Clair counties in the uth, Sangamon and Christian countes in central Illinois, and Fulton to e northwest.

Encouraged by their successes, the riking and idle miners decided to age a mass demonstration in Frank- County, where the majority of the ines had resumed operations, and here efforts of local picketers had en ineffective. Here the union and e producers had shown conspicuous termination to operate under the rms of the emergency contract, and tside interference therefore appeared cessary if a strike against the $5.00 scale was to be effective. The proposal for a mass march became a call for a crusade when a prominent member of a local at West Frankfort was fatally shot by a company guard and a picket was killed at near-by Zeigler. Each of these men had belonged to a local which had been threatening to go out on a strike.

Strikers in other areas of Illinois were galvanized into action against what they regarded as unjustifiable oppression of their fellow-miners in Franklin County. They were determined to duplicate in southern Illinois the success which they had achieved with mass picketing elsewhere in the state. From the towns to the north cars and trucks, crowded with miners and their wives, streamed southward before daybreak on August 24, forming a huge group at Gillespie (Macoupin County), and proceeding thence toward a town adjacent to Franklin County. Here the leaders planned to assemble the crowd and organize the campaign for closing the mines of Franklin County, which had produced almost one-fifth of the state's total bituminous output in the previous year.[19] A few miles short of the county line the motorcade met highway patrolmen who directed it to Mulkeytown, a village just within Franklin County. Here the sheriff and an enormous group of his special deputies blocked the advancing column. Shots sounded. Pandemonium engulfed the crowd. The oncoming automobiles so completely blocked the road behind the leaders that orderly retreat was impossible. Terrified, the men and women at the

[19] Illinois Department of Mines and Minerals, *Coal Report,* 1936, Table 25.

front of the line had to desert their cars and run from the range of the deputies' guns. These officials of Franklin County were determined that if any man in the local mines wanted to work he should not be stopped by picketers from other areas of District 12. The Herrin massacre, a decade earlier, had made the people of southern Illinois forever abhorrent of any situation in which conflict between rival groups of miners was a potentiality.

The strikers and their wives were furious at being treated thus. They were angry also because the frustration of their plans had been so complete. Their deepest resentment was aroused by the suspicion that the UMW had connived with law enforcement officers and employers to defeat the strikers. Such collusion with forces which organized labor had traditionally regarded as its worst enemies was not to be tolerated. The strikers' last shred of loyalty to the old union was destroyed by events at Mulkeytown. The rebels were no longer content with boring from within District 12. About fifty of the caravan's leaders met in the Gillespie city hall as they were returning north on the night of August 24. They voted to send out a call for an independent convention of all miners' locals in the state.

Establishment of a Rival Union

Miners from every coal field in Illinois gathered at Gillespie on September 1, 1932. After serious deliberation these men voted in favor of making a complete break from the old union and founding a new one, to be named the Progressive Miners of America. Executive officers for the new union were elected from among the men present at the meetings. The group agreed that the Progressives' first objective should be to persuade miners and operators to repudiate the Lewis agreement and to extend the $6.10 contract. For the present, the union should discontinue mass picketing and mass marches.

The founders of the new union were confident of the support of the miners of Illinois because they thought that very few men were genuinely willing to work under the UMW's contract with the Illinois Coal Operators' Association. In the first place, the belief was common among miners in Illinois that the employers' ability to pay more than the emergency scale was proved by the fact of the companies' having continued to operate during the UMW's strike under a temporary extension of the $6.10 wage structure. The PMA was sure of support also from men who felt that for one reason or another the emergency contract was disadvantageous to their particular classification of workers. For example, the new scale allowed a disproportionately large reduction in the wages of loading machine operators. Therefore opposition to the new contract was especially vehement in the counties where mines relied on hand-loaders, who feared that mechanization would be stimulated. Men for whom irregularity of work schedules in the mines had constituted the greatest problem were rebellious over new hour provisions which they felt would only aggravate their idleness. In short, the men who founded the PMA believed that they would have the support of thousands of miners who saw in the emergency agreement the

proof of the very faults which they commonly attributed to the old union's officers: disregard of the men's rights within the UMW and inability to protect the miners' earnings.

Among its supporters the new union found many miners who shared in the ownership of the firm which employed them. As the coal industry had become increasingly distressed during the late twenties and early thirties, many additional mines had been taken over jointly by the employees, whose only other alternative would have been loss of their jobs when the private owner could no longer support an unprofitable venture. Deductions to finance the expenses of a cooperatively-owned mine reduced the miner's pay check, usually to a figure significantly below the union's stated scale. This nullification of the standard rate had long been a nuisance to both the union and the individual enterpriser but was exceedingly difficult to regulate. Apparently the District Presidents, Fishwick and Walker, had handled this competition with somewhat less vigor than had Lewis, when he had been able to interfere freely in the affairs of District 12. Rumor was widespread that in signing the emergency contract Lewis had promised the Illinois Coal Operators' Association that he would close down any cooperatively-owned mine which did not pay the $5.00 scale. This threat moved many men of these high-cost cooperatives to support the new union.

The leaders of the PMA misgauged the long-run significance of the fact that economic insecurity had driven these men to revolt. The new union was assuming responsibility for solving problems with which a more mature organization had been unable to cope successfully. The hand-loader, the man who was least regularly employed, the man juggling the joint problems of labor and management in a high-cost mine — these were to be the persons whose economic position any dual union among the miners would find difficult to protect. It is generally true that if there are economic bases for the secession of members from a mature union, the persons who form the union are the very ones whose economic condition is not subject to improvement; and probably for this reason as much as any other the mortality rate has been high among dual unions. That the PMA has survived is therefore significant.

Support from the Operators

The new union looked optimistically at the prospect of support not only from many groups of miners but also from the operators. It believed that if the producers could be made to realize the strength of the miners' preference for the PMA throughout the state they would recognize the infant organization. Having seen the Illinois Coal Operators' Association break with the international union, UMW, in favor of an insubordinate group in District 12 in 1928, the Progressives were not without some basis for their hope. The PMA accordingly sent out invitations for a wage conference to be held in Edwardsville concurrently with its first constitutional convention.

Management's willingness to attend this meeting was due largely to lack of harmony among the state's operators. The coal industry is characterized in Illinois by the small scale of operations

of many producers and the tremendous scale of a few. For example, in 1933 more than half of the mines in the state produced less than 1,000 tons each; in the same year the twenty-five largest mines accounted for more than half of the 35 million tons produced.[20] In that year the output of a single company accounted for approximately 10 percent of the state's tonnage, a contribution not equaled by the combined efforts of the smallest 1,150 mines.[21]

The production of coal in Illinois was dominated by the large-scale operators who composed the Illinois Coal Operators' Association, with which District 12 had signed its collective agreements for many years. Even within this relatively small group of firms, however, there was wide diversity in the problems of operation. Unequal access to markets, differences in size of operations, dissimilar physical conditions in the mines, and even contrasts in the efficiency of the local labor force created unlike cost structures for the various firms. Feeling that the giant producers in the state were too predominant in the collective bargaining with the UMW, some operators had long been discontented as members of the Association. For these firms the standard variations which the contract allowed between individual subdistricts of the UMW, District 12, had provided inadequate escape. This group was receptive to the idea of change in the pattern of union-management relations, and a few of its members were willing to take the initiative in recognizing a dual union.

The operators who met in Edwardsville with the Progressives' scale committee early in October, 1932, came predominantly from the vicinities of Peoria, Springfield, and Belleville, but several other areas were represented. These companies were to constitute the nucleus of a new trade association: the Coal Producers' Association of Illinois. The producers gave formal recognition to the new union by agreeing to "check off dues and assessments as directed by the Local Union representatives of the Progressive Miners of America,"[22] and in succeeding months the Progressives were to regard the allocation of the check-off as the ultimate test of a company's affiliation. It was agreed further that the mine management would cooperate with the Progressives' pit committee and local president to settle disputes concerning interpretation of the contract.

The operators were united in their adamant refusal to concede to the new union a day wage in excess of the hated \$5.00 of the Lewis contract. Similarly, they allowed no alteration in the rate for mechanical loading, pick mining, or even the prices charged for house coal and powder to be used by the miners — all points of loud debate. In these first negotiations the representatives of the new union were forced to recognize that wages for the members of the PMA are irrevocably linked to the scale being paid to the United Mine Workers in the same area. For the PMA to exact a rate higher than that provided in the contract of the UMW

[20] Computed from Illinois Department of Mines and Minerals, *Coal Report*, 1933, p. 24.

[21] *Ibid.*, pp. 32 and 24.

[22] *The Progressive Miner*, October 14, 1932, p. 4.

would encourage operators to employ members of the rival union; to accept a scale lower than that of the United Mine Workers would alienate the members of the PMA.

With great difficulty the Progressives' scale committee, reporting on the negotiations in Edwardsville, was able to persuade the delegates at the constitutional convention that this contract was the best obtainable. The delegates assumed the authority of accepting the contract on behalf of the entire membership. The agreement was never submitted to the members for approval by referendum, although the United Mine Workers long had allowed the membership to vote on each new contract. The officials of the PMA were able to escape serious opposition to such autocratic procedures for two reasons. The rank and file was desperate to return to work, at almost any scale of pay. Second, the miners had transferred their hostility to Lewis, personally; breaking with the UMW had become an end in itself, rather than a means to economic security.

In attempting to answer the first of the two questions posed in the introduction to this article, it has been shown that the secession of a group of rebels from a mature union came about as a result of loss of faith in their union. Intra-union quarrels among the officers had done much to destroy this faith. The miners' holding these officers responsible for an unbearable economic situation had completed the disillusionment. In the next issue of this journal, a subsequent article will deal with a second major question concerning rival unionism. That is: What techniques have these two unions employed in their prolonged struggle for power since 1932?

Present Status of the World Dollar Shortage

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WITHIN THE PAST YEAR there have been substantial increases in the gold and dollar reserves of the Sterling Area, Canada, Latin America, and other regions. These increases have resulted from a number of factors. In the summer of 1949, the "dollar crisis" months, imports from the United States were sharply curtailed, especially by the Sterling Area, in an attempt to conserve rapidly dwindling supplies of gold and dollars. The devaluation of most foreign currencies in the fall of 1949, which increased the costs in local currencies of imports from the United States, led to some further curtailment.

The upturn in business in the United States even prior to the Korean crisis, on the other hand, led to a fairly sharp increase in exports to the United States as inventories in this country were replenished and industrial production moved up. Finally, some of the improvement in official foreign gold and dollar reserves — perhaps a fairly large proportion of it — resulted from a reversal of the speculative and frequently illegal movement into dollars that had been going on for some time. The extent of the devaluation, which was greater than had generally been anticipated and therefore promised to be a "once for all" change in currency exchange ratios, coupled with the increased production and economic stability in Western European countries, was important in this speculative reversal.

The outbreak of the Korean crisis and the subsequent announcement of an expanded defense program intensified all these forces. Price increases for raw materials and semi-processed goods that were in strong demand in the United States and in relatively short supply throughout the world raised dollar earnings on merchandise exported to the United States, especially by the Sterling Area, Latin American countries, and Canada. There has been some scrambling, especially by Latin American nations, to use at least a portion of their increased dollar earnings for the purchase of scarce capital equipment, perhaps in anticipation of export limitation by the United States. Thus far, however, a large part of the increased earnings has been added to reserves.

In addition to the changes in merchandise trade, there has evidently been a sharp renewal of speculative activity. The improvement in foreign trade balances has led to the anticipation in some quarters that the stronger currencies, such as the pound and the Canadian dollar,[1] would be revalued upwards, with a consequent exchange profit to their holders. Moreover, the prospects of higher price levels in the United States, of a continuation in the current high demand for imports, of heavy defense expenditures for some time to come with an attendant slowing down in the rate of increase of

[1] In the case of Canada, the peg on the dollar was recently removed and the rate permitted to fluctuate.

civilian output, have all led to the belief that the chronic dollar shortage of recent years may even disappear.

Prewar Pattern of Payments

Before World War II, a particular and intricate pattern of trade and service income made possible the multilateral settlement of international claims without the use of direct controls, at least for the principal countries of the world. The continental European countries as a group had deficits in their current account (trade and service) transactions with the United Kingdom and the United States. The United Kingdom itself was also a net deficit country vis-à-vis the United States. But the British dependencies (as well as the dependencies of other European countries, especially in the Far East) were substantial net earners of dollars which were paid out principally to the United Kingdom to discharge interest and dividend obligations on British foreign investments and to purchase British goods and services. The United Kingdom was thus able to earn dollars in third markets with which to cover not only her own deficit with the United States but also the deficits of the continental European countries.

Canada had substantially the same relationship towards the United Kingdom and the United States as did Continental European countries: a surplus with the former and a deficit with the latter. The United Kingdom was thus an important link in the multilateral payments mechanism, converting sterling into dollars for a large portion of the trading world.

Even in the interwar period, however, the dollar shortage was a constant threat. Two factors that prevented the shortage from becoming acute and permitted the continuation of multilateral settlement were the relatively heavy foreign investments undertaken by Americans in the 1920's and the United States gold purchases at an increased price in terms of dollars, in the 1930's. The former ended with the stock market crash, and the latter was obviously not an unlimited source of dollar supply.

A third factor, less apparent but nonetheless real, was the relatively low level of domestic investment in the United Kingdom and the principal Western European countries in the interwar period. Increased investment and productivity, it is true, would have ultimately enabled these countries to compete more effectively with the United States, especially in third-country markets such as Latin America and Canada, thereby diminishing rather than increasing the dollar shortage. But the immediate effect would have been an expansion of domestic income and an increased demand for imports, rather than increased availabilities of low-cost exports. In the climate of the interwar period, when short-run balance-of-payments considerations were in many instances considered more important than long-run increases in productivity and when private businesses were understandably unwilling to undertake heavy investments to satisfy an uncertain foreign market, the choice for the most part went to a cautious policy designed to conserve scarce foreign exchange and obviate the need for direct controls.

Two other factors rendered the pre-

war pattern of multilateral payments increasingly precarious. One was the reduced ratio of imports to industrial production in the United States in the depression years. The increase in industrial production in 1937 did lead to an increase in imports but not to the corresponding levels of the late 1920's. There was thus a trend towards increasing self-sufficiency, hence a reduced foreign exchange supply, in the very country whose currency was in excess demand.

The other factor was the increased need of the underdeveloped countries for heavy capital goods, in which the United States had a comparative advantage, rather than for finished consumer goods that had typically been supplied by the United Kingdom and Western Europe. The protracted depression the world over limited the initiation of such developmental schemes for increasing output in the underdeveloped countries. But to the extent that they were undertaken (as in 1937, when there was a short-lived boom), the increased demand for imports to which they inevitably gave rise was to a considerable extent concentrated on United States exports, thus increasing the pressures on the convertibility of the pound and the principal European currencies. It was largely the depressed state of the primary goods markets and the presence of exchange controls in a number of underdeveloped countries that kept this increasing shortage of dollars in check.

Postwar Pattern of Payments

After World War II, even this pattern of multilateral settlements broke down. It was to be expected, of course, that the mammoth job of rebuilding Europe and restoring productive capacity would disrupt trade and create, at least temporarily, a shortage of dollars. The dollar problem, however, did not disappear as prewar levels of production were reached. Most of the difficulties that had been present even before the war were still present after the war and in an accentuated form. In addition there were several important new ones.

One of the principal new problems was the decline in British income from investments and other services and the accumulation of a large international debt (the blocked sterling balances). The former meant a reduction in the amount of merchandise imports which did not require payment in foreign exchange. Putting it another way, British exports would have to be considerably higher in order to pay for the same amount of imports as before the war. The latter had substantially the same effect. Exports, instead of yielding foreign exchange, would serve merely to reduce outstanding sterling liabilities to the extent that the holders of sterling were successful in exerting pressure on the United Kingdom to release the sterling for current payments. Any given amount of exports from the United Kingdom, therefore, earned less foreign exchange than before the war, assuming that the distribution of those exports among countries remained the same.

To the extent that exports from the United Kingdom could be increased sufficiently to pay for the prewar level of imports (which must assume, of course, a relatively slow rate of blocked-sterling-balance release), some sort of

international balance could still have been maintained. Among the relatively undeveloped countries, however, there have been widespread increases in developmental schemes, in income, and hence in the demand for United States exports, particularly capital equipment. Though Britain's exports have increased a great deal, and though her exports are still limited not merely by markets but also by over-all productive capacity, it is doubtful whether they can be pushed sufficiently in third markets to yield the prewar level of dollars. To achieve this, it would be necessary for British exports to displace United States exports in these third markets, to such an extent that United States balances with them would be changed from surpluses to deficits.

The devaluations of a year ago were designed to facilitate such a change in the pattern of trade. But prices, whether of goods or of currencies, are by no means the only consideration in trade. The desire for higher living standards the world over, and the consequent emphasis on capital investment, have accentuated the demand for United States exports already discernible before the war. To displace the United States in these markets would require a shift in the composition of production and exports in the United Kingdom, as well as in the other Western European countries. Some progress along these lines has already been made, but it is doubtful whether much more progress can be achieved rapidly, in view of the fact that the smaller the home market is, the greater are the risks, and the more must export markets be relied on to provide adequate output and sales levels.

Capital goods exports from Europe to overseas countries are in part low because of the decline in West German exports. An increase in West German exports to overseas countries, however, would probably displace not only some United States exports in competitive markets but also exports of the United Kingdom and other European countries that have been expanded since the War. In addition, an increase in West German exports would require a very large increase in imports, both of industrial materials for manufacturing and of foodstuffs to satisfy some of the increased demand that is likely to result from increased employment and income. Finally, the sharp decline in trade between Eastern and Western Europe is particularly hard on Western Germany, since it cuts out both supplies and markets. In her attempt to eliminate or at least reduce her dollar deficit, therefore, Western Germany is likely to bid up the prices of scarce materials and foodstuffs and displace exports of other Western European countries, particularly the United Kingdom, both of which would have the effect of shifting some of her present dollar burden to the latter.

To state the problem another way: the British over-all current account position has been virtually in balance for the past two years. The difficulty has been that surpluses earned with particular countries have not been convertible into dollars, because of the high dollar demand in these countries or because these countries could draw on accumulated sterling holdings to discharge their debts. On the other hand, those countries having surpluses vis-à-vis the United Kingdom were fre-

quently in a position to require dollar payment. Thus the total dollar payments made by the Sterling Area have been considerably in excess of the direct dollar deficit, a large part of United States aid to the United Kingdom having been used to settle current account deficits with Latin American countries and Canada. In order to earn enough net dollars to maintain the prewar pattern of multilateral payments, therefore, the Sterling Area would have to be able to displace United States exports in these markets — or the United States would have to increase imports without a corresponding increase in exports — to such an extent that the United Kingdom would be the surplus country and the United States the deficit country.

It might be argued that removal of these deficits, rather than turning them into surpluses, would be enough. This, however, would not take into account the prewar relationship of the United Kingdom to continental Europe, to Canada, and to several other countries that typically depended on their surpluses with Britain, and hence Britain's surpluses with third countries, to pay for their own deficits with the United States. In fact, by the summer of 1950, the Sterling Area had succeeded in bringing its own dollar position into balance, when newly mined gold shipments are included. This balance, however, was achieved to a considerable extent by a drastic limitation of imports wherever possible. The continental European countries as a group could thus no longer earn dollar-convertible surpluses in the United Kingdom to pay for their own deficits with the United States and other countries requiring dollar payment.

Though the Marshall Plan countries reduced their over-all dollar deficit sharply from the first half of 1949 to the first half of 1950, that deficit (including dollar payments to third countries) still amounted to an annual rate of about $2.3 billion in the latter period. To achieve viability in the over-all balance of the Marshall Plan countries, without dependence on United States aid, that deficit will have to be removed; and to remove it, the continental European countries and the United Kingdom between them will have to displace United States surpluses in third countries to the extent of the over-all deficit, whether this is achieved through an actual displacement of United States exports in those markets or through an increase in United States imports from those markets without a corresponding increase in exports.

Removal of the dollar deficit, moreover, would not in itself warrant the removal of direct controls over the foreign exchanges by the principal trading countries. It is largely by dint of continued and even increased restrictions on imports that the deficit has been reduced in the past year and a half. Removal of these restrictions would in all probability loose a flood of demand for American products, unless the situation in the United States were to change markedly. There are indications, in fact, that many of the countries (particularly in the Western Hemisphere) that have received increased supplies of dollars for sales of primary products to the United States, within recent months have attempted to increase their purchases here, rather

than in the Marshall Plan countries. Moreover, until the gold and dollar reserves of the Marshall Plan countries are built up sufficiently to enable these countries to withstand temporary setbacks in trade, the foreign exchanges can hardly be freed completely.

Impact of Defense Expenditures

The improved business situation in the United States in the first six months of 1950 was obviously beneficial to foreign countries. Between the summer of 1949 and the spring of 1950, our imports increased at an annual rate of about $1.5 billion; and though this figure overstates the relation between United States industrial production and imports, since some of the decline in 1949 was in anticipation of devaluation, there can be no doubt that even in the absence of such speculation there would have been a substantial increase in purchases from foreign countries.

Not only have purchases moved up but prices as well; and a large defense program in the United States will probably cause further increases in the prices of our imports. Since United States imports consist largely of primary products, either raw materials or foodstuffs not produced domestically, and since the elasticity of supply of such products is usually low, it is quite likely that price increases in them will be greater than the price increases of our exports. This improvement in the terms of trade for the primary producing countries, namely, an increase in export prices relative to import prices, will therefore offset, at least in part, the worsening in the terms of trade occasioned by the devaluation of a year ago.

For the United Kingdom and the Western European countries, however, there is likely to be a further worsening of the terms of trade, an increase in the ratio of import prices to export prices. This is an important consideration which, to the extent that it occurs, will affect markedly not only living standards but also the ability of these countries to further reduce their over-all deficit with the United States. The decreases in many raw material and foodstuff prices that occurred in 1949 were by no means an unimportant factor in enabling these countries to reduce both their direct deficits with the United States and their dollar payments to third countries. Unless they will be able to compensate for the reduced terms of trade by increasing exports of manufactured goods, their balance-of-payments position will suffer. To those European countries, such as the United Kingdom, that have primary producing dependencies an increase in prices of primary products relative to other products will of course appear on the credit side as well. Even in these cases, however, it is quite likely that the dependencies will demand and secure a larger share of the total dollar receipts of the area, so that the gains will not be evenly distributed.

Even if the Marshall Plan countries should be successful in compensating for the worsening of their terms of trade through increased exports, thus safeguarding their foreign exchange position, they will suffer a decline in real income unless they would otherwise have faced an unemployment problem. With no unemployed resources to draw on, an increase in the production of export goods will reduce

investment (which would ultimately reduce productivity) or consumer goods production: of the total gross product of the country, more will go out as exports and less will be retained at home. In countries such as Belgium, Italy, and Western Germany, where strongly deflationary policies had been adopted and where unemployment had reached sizable proportions by the end of 1949, the increase in third-country markets occasioned by defense expenditures in the United States may even cause real income to increase, although not, of course, as much as would be the result of an increase in domestic investment. In countries such as the United Kingdom, Norway, Sweden, and the Netherlands, an increase in import prices relative to export prices will cause living standards or domestic investment to decline.

The defense expenditure program in the United States is likely to increase not only our imports of primary products but also our imports of finished consumer goods of the type exported by Europe. The Marshall Plan countries will probably, therefore, be able to increase their sales to the United States, thus reducing their direct dollar deficits. Here again it should be pointed out that the effect on domestic income will vary from country to country, depending largely on the availability of resources. For all the countries an increase in exports more than sufficient to take care of such reduction in terms of trade as may occur will better the foreign exchange position. But in those countries that have had full employment, an increase in exports relative to imports will decrease domestic consumption or investment levels unless compensated by increased productivity.

Even in the primary producing countries, where the increase in export prices is likely to exceed the increase in import prices for a time at least, the rise in foreign exchange availabilities will appear as a greater blessing than it really is. Capital goods will be scarce and rationed, even if only on a voluntary basis. This means that development schemes will in many instances have to be postponed. If restrictions on consumer goods are lifted, consumption will rise so long as the terms of trade remain favorable; but if past experience is any guide, such a move is likely to result in dissipation of foreign exchange on luxuries rather than an increase in imports of essentials. The building up of reserves, on the other hand, in anticipation of capital goods purchases to be made later will be subject to the danger that their real value will decrease because of price inflation.

Heavy defense expenditures in the United States, therefore, may at first glance appear to ease the dollar shortage problem and to bring the world closer to achieving uncontrolled multilateral payments. If the ultimate goal of the international community, however, is not merely a precarious balancing of accounts with the dollar area but also an increase in productivity and living standards both in Europe and in the underdeveloped countries, the way in which dollars are spent makes a great deal of difference. A program of American investment in the underdeveloped countries, for example, designed to increase productivity and living standards, would expand dollar supplies in world markets and permit the Marshall Plan countries to compete

for the dollars on a price basis. Such a program would also go a long way towards achieving our political goal of checking the spread of Communism, since poverty-stricken peoples with virtually nothing to look forward to in the way of economic betterment can hardly be expected to fight actively for democracy.

As for defense expenditures in the Atlantic Pact countries, their effect on the dollar problem will depend largely on the share to be borne by the United States. Even if the United States should provide the bulk of the material needed for defense, increasing the armed forces of the European countries will reduce the civilian labor force and therefore the capacity to produce. Since living standards in most of these countries are too low to permit much of a cutback, reduced production will have to fall either on investment, which would impair long-run productivity, or on exports, which would make the dollar even shorter than it is at present. If, on the other hand, the European members of the Atlantic Pact should undertake to produce and finance a substantial share of the total defense program, then the dollar will become very short indeed and civilian aid by the United States will probably have to be increased.

Is a Consistent Governmental Economic Policy Possible?

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In many countries today citizens are being urged to have their governments pursue specific, logically consistent patterns of economic action for the attainment of goals upon which it is implied there is adequate agreement. In many other countries — constituted differently, politically — citizens are being told of government action ostensibly carefully calculated to attain ends of the very highest order. In either case the usual implication is that it is obviously possible to know what the desirable end (or goal) is, that there is a single means best adapted for its attainment, and that all important segments of the population are certain therefore to support the indicated governmental activity.

It is the task of this brief article to show the unreality of this simple view. The underlying thesis is that any government will respond simultaneously to various groups urging varying ends upon it, that it will employ many means for the attainment of its multiple goals, and that it will at no time fully satisfy any important group. This thesis will then be illustrated briefly with reference to our contemporary United States economy.

Government Action Limited by Social Pressure

Government action — the action of that institution (the political state) which is formed around the central core of a belief that some organization is necessary if all residents of a given geographic area are to pursue common goals effectively — must properly be viewed as group, or social, action. This means that governmental policy must be made, and its results administered within the permissive limits established by the prevailing mores of the community over which it exercises authority. The political state — here equated with government — is merely part of an integrated social structure with which it must essentially be in harmony.

The preceding generalization is applicable to even the most dictatorial and autocratic of governments. Even an absolute dictator must figuratively put his ear to the ground to ascertain public opinion and must then either act within the limits the public will tolerate or take action to change that opinion through the use of the various propaganda devices that are open to him. An action taken contrary to strongly held opinions of the citizenry would certainly subject the dictator to penalties. He could expect non-cooperation, general lethargy, excessive police or supervisory costs, or — in extreme cases — even open revolt. After all, while the most autocratic of rulers can afford to liquidate relatively small and uninfluential minority groups, he cannot liquidate his whole population. He must bend to the pressures of their opinion, propagandize, and cajole them to the acceptance of his views — but

always he must act within the limits of their toleration.

If political states dominated by dictators must find their sovereignty limited by the views held by their citizens, how much more likely it is that states governed by freely-elected executive and legislative officials should be so bound. Here the government's activities can be more quickly and easily influenced, inhibited, modified, or completely changed than is likely under alternative forms. As a matter of fact, the essence of democratic government is the ability of citizens to make their goals the goals of the political state, and to make the means they desire for the attainment of their goals the means to be employed by the state.

Ends and Means

Goals of Government Activity

If the preceding introductory statements are valid, the goals of the political state, at least as they are presented to and are perceived by the citizenry, must be those which are within tolerable limits. There remain, however, two fundamental questions. First, is there a single, well-defined goal for governmental action? Second — and this anticipates the probable answer to the first question — if there are several goals, are they likely to be consistent with one another?

Goals for any social group — and particularly for the state — are likely to be many and varied. This results fundamentally from the fact that individuals seldom have a single goal to the exclusion of all others, and from the fact that different social groupings within the confines of a single state are likely to have differing predominant motives and ends. So far as a given individual is concerned, his chief concern, for example, might be with amassing the maximum possible income and wealth. He would choose as the primary goal of government the maintenance of a climate within which this end could be most fully realized. At the same time, however, he might wish the government to pursue policies designed to insure peace, increase the volume of foreign trade, diminish or abolish unemployment, guarantee minimum living standards for all, abolish the use of alcoholic beverages, insure civil liberty and equal economic opportunity for minority groups, and so on. Some of these goals may complement his primary goal and others within the group. Still different ones may be contradictory.

It is not certain that such contradiction in goals will be obvious to our hypothetical individual. He may simply never have methodically and systematically set forth his ends—he may simply favor apparently disconnected policy decisions or actions on a piecemeal basis, without considering their effects on the attainment of other goals toward which he believes society should also move. Or in that circumstance wherein he has carefully listed and considered the many goals he is seeking simultaneously, he may never have ranked them in order of their importance to him, may never have rationally considered the consequence of action flowing from each, or may — through lack of adequate information and tools of analysis — have done so incorrectly. The net result is that individuals may find the

simultaneous pursuit of contradictory ends not only within tolerance limits but actively to be desired.

If this multiplicity of contradictory ends is possible for an individual, it is even more likely for a government which reacts to the blandishments of not one, but millions, of individuals; to not one, but scores, of organized pressure groups and institutions. These individuals and these organized groups will have differing primary goals, differing subsidiary goals, and may or may not have formally and accurately tested them for contradictions. Yet the goals of most may be tolerable to all — if not necessarily desired by them.

Some of the many goals of individuals and groups within any nation will be intolerable to the majority or to strategically placed groups within the society. It will be impossible to effectively implement policy for their attainment. Many additional goals, however, will be accepted as proper ends for government action. They can be implemented — the probability of contradiction and conflict notwithstanding.

Means for Attainment of Ends

Just as there may be many goals for government action to be simultaneously pursued, so also may there be a number of means suggested for the attainment of each. Different individuals and different groups may have selected varying means for the attainment of a certain goal. Or the same individual or group may, with the passage of time and a change in circumstances, advocate the use of a changed method.

Thus, for example, a major goal of government might be held to be the encouragement of an economic organization allocating the factors of production as they might be allocated in an economic system meeting all the economists' requirements for "competition." To implement this goal we should today almost certainly find the following suggested.

First, inasmuch as such competition would occur except for government action, get government out of (almost) all economic and business affairs. Second, in order to reach this end, we should restrict monopolistic action by existing firms, in part by persuading government to adopt a vigorous antimonopoly campaign. Third, attainment of such a goal will be possible only if government functionaries make decisions for individual business firms; thus the government should own and government officials should operate business units to this prescribed end.

Each of these alternatives would be chosen by some of the individuals who agreed that rigorous competition was a proper end. The choice made by individuals would depend upon (1) their knowledge of the nature of the existing industrial structure; (2) their definition of "competition"; (3) their knowledge as to how each of the suggested means would actually change the allocation of factors; (4) their other goals, the importance thereof, and the perceived effects thereon of the use of any of the means suggested; and (5) their emotional reaction to the state of affairs each alternative suggested to them.

Further, as specific instances looking to the implementation of the goal of "competitive" allocation arose, differing solutions might be suggested by the

same individual or group. For example, we might find the same individual recommending that government "get out of agriculture," demanding dissolution of "monopolies," and asking for government ownership of utilities.

The net result is that possible means — within tolerable limits — are a multiple of the possible ends and goals. More than this, the means may be as contradictory as the ends, since emotional response, inadequate knowledge, or insufficient consideration of available facts and evidence may cause the selection of obvious means inadequate to the attainment of those ends which it is desired to reach.

A "Mixed" Economy

The foregoing analysis suggests the virtual impossibility of having at any time, in a democratic society, a sharply defined end for government action and a clearly defined and stated means for its attainment. Such a situation would demand either a single goal or a carefully arrayed hierarchy of goals (so arranged that conflicts would always be resolved in favor of the goal highest on the list) to which all politically or economically influential groups could adhere. It would further entail a similar common acceptance of the means proper for the attainment of those ends.

To get such common purpose and common action would require that the important groups in society have (1) the same view as to what life should hold for each specific group; (2) the same view as to the state of affairs then existing in the social structure; and (3) the same view as to how — in the given society — the desired ends could be attained. Such unanimity of opinion is, in a free society, most unlikely; in a dictatorship, it is unlikely over any protracted period.

Thus, in a relatively free society such as has existed in the United States for generations we may expect the simultaneous pursuit of many unranked goals by the use of many different mechanisms. Many individuals — many groups — from time to time impose on the state attempts to attain one or another of their goals. They suggest — and from time to time impose the use of — certain means for the attainment of goals. Previously important groups decline; others rise to positions of influence. They have new goals or new means to offer. They may wipe out the old, they may modify the old, or they may superimpose the new upon the old.

With the passage of time we have then a government the policy and organization of which are truly "mixed" —many goals pursued and many means used, at one and the same time.

Important Goals and the Means for Their Implementation

In a society wherein government activity having an impact upon economic and industrial institutions is conceived and implemented under the circumstances previously outlined, such activity is obviously *not* likely to be neat, logical, and consistent. It will not be possible to explain policy in terms of any individual's preconception of what its goals either are or ought to be — indeed, it will not be explainable on any monistic basis.

Despite the foregoing, however, it should be possible to ferret out the ostensible goals of government activity

in any society, to ascertain the means offered for their attainment, and to point out the individuals and groups who are most likely to be connected with each. As an example — and as an illustration of competing ends and means — we might use the current United States economy. Here we would certainly find the following major goals of government activity, the following means being urged for the attainment of each, and the indicated groups supporting each.

These goals are not here arranged on a logical scale or continuum, as this would be contrary to the helter-skelter pursuit of a host of contrasting and oddly assorted goals that features our actual economy. Neither are these objectives and means of achieving them defined with precision, for this too would be at odds with the vague, overlapping, undelimited way in which such definitions are actually formulated.

I. Minimum Governmental Functions in an Economy of Individual Action

In common with the people of Great Britain and Western Europe, the people of the United States in the 18th and 19th centuries were confident that there existed a divinely ordered society — an order that could be achieved through the unfettered action of individuals. This confidence in the existence of "natural law" made fearfulness of positive government action reasonable. When it is held to be true that free individual action can operate to give the populace the widest measure of satisfaction, government action can only act to obstruct the ordered operation of the system.

This confidence that the individual's natural — and, therefore, presumably beneficent — actions would give satisfactory results was given intellectual respectability by economists who included it under the concept of "competition." When so subordinated to "competition," individual action came to mean rivalry (among consumers, among factor suppliers, among entrepreneurs) of a certain stipulated kind in an economy with certain stipulated institutions. These stipulations notably included (1) the assumption of unlimited wants and limited resources; (2) the basic assumptions of private property, freedom of contract, private business firms, and motivation of individuals to seek maximum personal satisfaction; (3) assumptions that decision-makers take prices as given, have full knowledge, and find no bars to indicated adjustments; and (4) assumption of the close identification of the owner and manager within business enterprises.

When competition existed — when rivalry met all the qualifications listed above — then economists, using impeccable logic, demonstrated that a very desirable economic organization existed. They demonstrated that — given the distribution of income and wealth — goods most wanted would be produced in the amounts most wanted, that all productive agents desiring employment would be employed, and that all these agents would be utilized in that capacity wherein they would be most productive. Competent economists, of course, realized that these happy results would follow *only* if the assumptions of competition actually

described reality — the actual, existing state of affairs. Many other individuals — legislators, businessmen, labor leaders — accepted, however, the conclusions of these economists as being applicable to our society without inquiring as to the nature of the assumptions. It was sufficient for them that the economists required rivalry (of some kind), that actual rivalry (albeit of some other kind) was obviously present in our economy, and hence that the ideal organization of industry necessarily resulted.

It should be noted here that no important groups calling for minimum government activity actually desire *no* government activity. They will usually call upon the government to (1) protect private property and enforce private contracts, (2) provide a medium of exchange, (3) provide for the defense of the country, and (4) furnish such necessary goods and services (postal, canal, roads, etc.) as are unprofitable to private enterprise.

Individuals and groups in the following categories are likely to embrace this laissez-faire view:

1. Those holding to the views of the 19th Century liberals that complete freedom of action in the economic sphere not only inevitably leads ("naturally") to optimum economic organization but is essential to political freedom and democracy as well.

2. Those relying on the demonstrations of competitive economists either (1) because they do not realize the specific nature of their assumptions, or (2) because they believe the assumptions descriptive of reality.

3. Those now in a position, or believing themselves soon to be in a position, wherein the maximum exercise of *their* power depends upon limited government activity.

II. Action to Enforce Competition

As has been previously noted, professional economists indicated that in a society in which the assumptions of competition actually described reality a satisfactory economic organization would result. Most economists, and many laymen, realize that our existing society does not conform to these assumptions. They observe that if these assumptions are to be realized government action will have to be taken to give us a reasonably competitive structure.

Government action to enforce competition between private decision-makers has taken primarily the forms of (1) antitrust activity, and (2) programs of aiding small business. Such action is probably desired by the following:

1. Economists — and others understanding their position — who do not see as existing or as natural a society conforming to competitive assumptions, who believe antitrust action is sufficient for attainment of a workably competitive structure, and who believe that such a structure would not prevent important efficiencies of large scale.

2. Those who believe that political and social advantages accrue to a society of small firms and individual freedoms of action, and who see large units placing important restrictions thereon.

3. Those the growth or maintenance of whose economic power (or existence) is currently being impinged upon by existing large and powerful units.

III. Action to Attain a More Equal Distribution of Wealth and Income

An economy conforming in fact to all the assumed conditions of "competition" will demonstrably afford to individuals an income equal to the value

of the marginal product added either through the individual's personal effort or through the use of non-human factors owned by the individual. This means, of course, that incomes of individuals will certainly vary with differences in native abilities, training, and ownership of material resources. Further, the possibility of such deviations increases when certain decision-makers gain monopoly power and increase their incomes and ultimately their wealth at the expense of economically weaker groups.

Since the demand for goods and services therefore emanates from individuals coming into the market unequally equipped with incomes, many have held that the market mechanism is incapable of calling forth the best allocation of resources. Persons of this persuasion call for action leading to a more equal distribution of income (which, of course, ultimately depends upon a more equal distribution of privately held wealth), so that all consumers will come into the market equally equipped to demand goods and services from it.

Government action tending to increase equality has taken the forms of support to antitrust activity, progressive personal income taxation, progressive estate and gift taxes, and expansion of governmentally furnished consumption goods (furnished, in part at least, out of the proceeds of the progressive taxes). Advocates of such action include:

1. Those — particularly economists — who are concerned about the ability of the pricing mechanism to afford an optimum allocation of resources.

2. Those who simply see a tax structure based on "ability to pay" as the easiest means of getting the funds to cover increasing government expenditures.

3. Those in lower income brackets who anticipate that they will become better off as the result of decreased inequality.

IV. Action to Restrict the Use of Monopoly Power

Most groups and individuals within our society recognize that in certain industries firms able to make most efficient use of resources are necessarily large. While there is widespread disagreement as to the number of such firms, where their existence is recognized it is understood that the restraints normally enforced by rivalry or competition cannot be operative and that the dissolutions which might be dictated by antitrust activity would result in important loss in efficiency.

The solution found here is most frequently price regulation of such businesses (usually termed "utilities"). Occasionally solution is found in outright government ownership and operation.

V. Government Ownership of Material Resources

Although historically and currently of relative political impotence in the United States, some hold the view that the government should own the material agents of production and operate the producing units. This view will be held by:

1. Economically unsophisticated groups who react against what appear to them to be abuses of the present system by asking for government ownership and operation, frequently simply assuming that government operation will result in higher wages and a disappearance of profits, rent, and interest.

2. Economically highly sophisticated in-

dividuals who hold that (1) a more equal distribution of income and (2) an allocation of resources similar to that described by "competitive" theory are effectively attainable only when the government owns the non-human factors of production and operates the larger business enterprises. Such positive government action is held necessary to halt the tendency of private ownership of land and capital to generate income inequality and to make possible the making of decisions for the firm according to the "competitive" norm without the necessity of an atomistic society.

VI. Action to Give Monopoly Power to Specific Groups

In the "competitive" economic system wherein individuals are presumed to act freely to attain their own ends, they are also presumed to be at the mercy of the market mechanism and to act in response to its dictates. Specifically, such a society is presumed to furnish to its constituents amounts equal to the value of the marginal product added either through individual effort or through the use of non-human factors owned by the individual. Further, it is presumed that individuals, land, and capital will be utilized in that location, or in that particular employment, wherein the market indicates their return will be the greatest.

There is, of course, no reason to suppose that individuals — or organized groups — will be satisfied with their lot under such a system. As a matter of fact, many have not been and have sought the solution through attaining a monopoly position — and the important, though only partial, relief it brings from the dictates of an impersonal market mechanism. Various attempts to gain monopoly status have been buttressed by positive government action. Business firms have been aided by government-sponsored cartelization of industry in some instances, patent and copyright protection, tariff protection, and so on. Organizations for the monopolistic merchandising of labor's services and of farm products have received government encouragement and assistance in the implementation of their programs. In fact, the general attitude has seemingly been that "everyone should be subject to competition but me."

VII. Action to Maintain the Proper Climate for Private Enterprise

Regardless of other governmental actions taken, it seems to many that private enterprise retains two great faults: the first — a tendency to take action considered immoral and dishonest relative to customers, suppliers, and rivals; and the second — a disheartening tendency to sink into protracted periods of low-level activity and painful unemployment.

Individuals and organized groups have, therefore, frequently taken the position that if private operation of business enterprises is to continue such operation must not offend standards of morality and must give relatively stable and full employment. These groups have obtained at least some government action on both counts.

Action to maintain acceptably high standards for business action has been taken under the Federal Trade Commission Act, the Pure Food and Drug Act, the various securities acts, acts regulating banks and insurance companies, and many others.

It is likewise true that governmental

monetary and fiscal policies are being more closely scrutinized in order that they may have desirable effects on cyclical fluctuations and employment. In part, this action is being taken pursuant to the general directive contained in the Full Employment Act of 1946 and to the advice of the President's Council of Economic Advisers created thereby.

VIII. Action to Attain Security Through Government Action

As we have noted before, a free-enterprise economy does not always reward its citizens as they wish to be rewarded, or as they are able to convince government officials they should be rewarded. They have, as has been pointed out, therefore asked for and received the right to benefit themselves through monopolistic organization.

There are, however, certain goals which even monopoly organization seems unable to achieve for all. They are what have loosely been termed "security" goals — protection against the financial hardships flowing from poor health, accident, unemployment, and old age. The government has taken action — and is constantly being asked to take additional action — designed to give such protection.

IX. Action to Give Maximum War Potential

In an economic system geared to produce the maximum output of the tools of war, many of the important functions usually performed by the price mechanism are performed by administrative fiat. Demand is not the total of the effective demands of individual consumers expressed through the market — instead it takes the form of orders by defense officials for armaments and their allocation of available consumer goods to civilians. Business firms do not adjust to changes in market conditions — they produce goods administratively required and are compensated in accordance with their costs. In such an environment, it should be obvious that a bureaucracy is required to turn requirements into orders, orders into goods. Large, integrated corporations possess this bureaucracy and obviate in some important measure the necessity for the creation and training of an expanded government bureaucracy. This fact, plus the need for large quantities of standardized weapons, argues for an economy of a few large firms to give a maximum war potential.

Thus important groups, who in peacetime see the desirability of the impersonal market mechanism over administrative fiat in translating consumer demand into orders, who see corporate bureaucracies as luxuries, and who feel that small firms are more sensitive to demand shifts than large, are disposed in periods of war and active preparation for war to favor an expanded role for large, integrated enterprise.

Conclusions

This article has attempted to indicate the unlikelihood of a comprehensive government economic policy with a clearly defined hierarchy of goals and uncontradictory means for their attainment. The preceding brief examination of the ends which are currently being pursued by government economic action in the United States, and of the means being employed for their attain-

ment, gives a vivid illustration — though, of course, not conclusive proof — of this contention. Many of these ends, as well as many of these means, are obviously ill-defined, inconsistent, and even mutually exclusive.

An acceptance of the point of view here espoused will have certain important effects. First, it casts doubt upon the ability of any group — no matter how learned or how powerful — to either educate, propagandize, cajole, or force its program on a heterogeneous society without important qualifications and modifications. This means that the efficacy of a suggested program of action cannot adequately be assessed purely in terms of the program itself. It must instead be evaluated in terms of its impact on the existing structure and of internal modifications necessitated in order to gain acceptance. Second, it becomes a dubious presumption to suppose that a dictatorship will be much better able to implement policy than a democracy. True, it may on the surface, and for limited periods, appear to resist modifications in ends or means. This, however, must be at the cost of accumulating underlying frustration and tension certain to reduce the needed cooperation of the citizenry.

Third, this view points up the difficulties in the way of defining usefully what it is that constitutes a "satisfactory" economy. It suggests simply that an economy — together with the economic activities of its government — will be considered adequate when the influential groups therein consider that sufficient attention is being given their points of view. On this score it is well to remark that what these groups *think* is true is important — that what is actually true is of only secondary significance. Finally, of course, the thesis here expounded makes it impossible to take seriously statements to the effect that governmental policy has been oriented — or is likely to be oriented — to any single end or to the use of any single technique.

Picketing as Free Speech

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In the past ten years, the statement that picketing is constitutionally protected free speech has become rather common. Like many other generalizations on great constitutional issues, the statement is based on a particular case, and on closer inspection proves to contain little more than a germ of truth. Although before 1937 "the constitutional right to picket" made excellent publicity material, it is doubtful that many people really expected the United States Supreme Court to classify picketing as free speech and thereby bring it within the protection of the Constitution. Nevertheless, in 1940, the Court did just that in the now famous case of Thornhill v. Alabama.[1]

In the Thornhill case, an Alabama statute declared that "Any person or persons, who, without a just cause or legal excuse therefor . . . loiter about the premises or place of business . . . or who picket the works or place of business of such other person . . . for the purpose of hindering, delaying, or interfering with or injuring any lawful business or enterprise of another, shall be guilty of a misdemeanor. . . ." Thornhill, who was engaged in peaceful picketing, was arrested and convicted under the provisions of the statute. The Supreme Court reversed the conviction. The Court said that the statute prohibited nearly every practicable, effective means by which the public could be enlightened on the nature and causes of a labor dispute. It went on to add, "In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution." The Court had used a constitutional bulldozer to force its philosophy of proper labor relations into what had been considered to be the realm of state police power.

Legal Background of the Question

When the laboring men of England first attempted to combine in order to improve their employment conditions, they were treated as criminals. At that time most political economists held that the economy could best be served by maintaining a free market. Since workers were interfering with the operation of a free market when they attempted to force higher wages, any combination for that purpose was considered to be unlawful. The courts applied what is known as the doctrine of criminal conspiracy in order to force laborers to conform to these principles of classical economics. In 1824 a statute was passed which made labor combinations lawful but not until 1906 was picketing considered to be lawful, and even then only "peaceful" picketing was permitted.

The common-law doctrine of criminal conspiracy was carried over from England and used as a blunt instrument to crush the activities of the early

[1] Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093 (1940).

unions in the United States. Not until 1842 did the doctrine lose its vitality. In the case of Commonwealth v. Hunt,[2] Chief Justice Shaw of the Massachusetts Supreme Court so obviously sidestepped the issue of criminal conspiracy that it never again played a prominent role in the labor law of the United States.

Gradually all courts recognized that laborers had the right to organize for lawful purposes. The unions soon developed self-help techniques, one of the most effective of which was the picketing device, to obtain their objectives. When picketing was first used, all courts considered it to be an unlawful technique. In 1896 the principle that picketing was lawful if peaceful was laid down by the Massachusetts court. Several courts, however, continued to hold that picketing was unlawful. This holding was based upon the view that peaceful picketing was a contradiction in terms. One court stated, "There can be no such thing as peaceful picketing any more than there can be chaste vulgarity or peaceful mobbing or lawful lynching. When men want to persuade they do not organize a picket line." By 1920, the state supreme courts were about equally divided on the question as to whether there could be legitimate peaceful picketing. At any rate, all picketing, peaceful or otherwise, was within the reach of legislative regulation.

The attitude of the Supreme Court of the United States was shown in two cases decided in 1921. In the first of these, American Steel Foundries v. Tri-City Central Trades Council,[3] the Court grudgingly admitted that peaceful picketing could be lawful. In that case an injunction was granted against all picketing. This order was modified by the District court by adding the words "in a threatening or intimidating manner." The Supreme Court of the United States rejected this modification and stated, "It ignores the necessary element of intimidation in the presence of groups as pickets. The phrase really recognizes as legal that which bears the *sinister name* of picketing. . . ." (Italics added.)

Two weeks later the Court handed down its decision in Truax v. Corrigan.[4] The Court was faced with the problem of deciding whether a state could, by statute, prohibit injunctions against picketing. It decided that such a statute was unconstitutional as applied to the facts because it deprived the employer of his property without the due process of law required by the Fourteenth Amendment. In discussing the picketing Chief Justice Taft said, "But here the illegality of the means used is without doubt and fundamental. The means used are . . . picketing and patrolling of the entrance to their place of business, and the consequent obstruction of free access thereto. . . ." In discussing a previous decision under Section 20 of the Clayton Act, he stated, "We held under these clauses picketing was unlawful, and that it might be enjoined as such, and that peaceful picketing was a contradiction in terms which the statute sedulously avoided. . . ."

[2] Comm. v. Hunt, 4 Metc. 11, 38 Am. Dec. 346 (1842).

[3] American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 66 L. Ed. 189, 42 S. Ct. 72, 27 A. L. R. 360 (1921).

[4] Truax v. Corrigan, 257 U. S. 312, 42 S. Ct. 72, 66 L. Ed.—(1921).

Holmes, Pitney, Clarke, and Brandeis dissented.

This view remained substantially the same until 1937 when the Court decided Senn v. Tile Layers Union.[5] The Senn case arose under the Wisconsin Labor Code which declared peaceful picketing and patrolling to be lawful. The question involved in the case was whether this statute, as construed and applied, violated the due process clause or the equal protection clause of the Fourteenth Amendment. Senn was peacefully picketed for the purpose of forcing him to become a union contractor. In the past he had done most of his work with his own hands. If he had capitulated to the union he would have been forced to hire journeymen members of the union to do the work. A 5 to 4 decision held that Wisconsin could constitutionally make peaceful picketing lawful and protect it from court injunctions.

Of course, this is not a holding that the Constitution requires peaceful picketing to be treated as lawful. In the majority opinion, however, a statement made by Justice Brandeis includes a sentence, which, if read out of context, would appear to say just that. He said, "Clearly the means which the statute authorizes — picketing and publicity — are not prohibited by the Fourteenth Amendment. Members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution. The State may, in the exercise of its police power, regulate the methods and means of publicity as well as the use of public streets."

Irrespective of what Justice Brandeis did or did not intend to say, his statement came to be the basis for the doctrine that picketing is constitutionally protected free speech. His statement was used by state courts to hold that picketing was protected by the free speech provisions of state constitutions, and it was used as a weighty precedent in the 1940 Thornhill case. Thus, within three years, picketing advanced from "sinister name" to "constitutional right."

Statutory Status of Picketing

For decades many states and municipalities have attempted to regulate various aspects of picketing. In spite of the Thornhill case several of these regulations remain on the statute books. In fact, many were passed after the end of World War II when anti-labor sentiment was strong. Most are parts of comprehensive plans which attempted to deal with the entire labor relations problem. These plans are complex and vary from state to state.

Some states declare picketing to be unlawful in the absence of a labor dispute between the employer and his employees. At least thirteen states prohibit mass picketing and, to complicate the problem further, each of these states has a different definition of what constitutes mass picketing. Stranger-picketing and picketing in aid of a jurisdictional strike are sometimes forbidden. Picketing where a majority of the employees have not voted in favor of a strike, picketing of a worker's home, and picketing by a minority union to upset a valid certification are

[5] Senn v. Tile Layers Union, 301 U. S. 468, 81 L. Ed. 1229, 57 S. Ct. 857 (1937).

limited in some states. A few states protect special classes of activity, such as processing of agricultural products, from picketing.

The Thornhill case was decided at a time when the policy of the Federal government was to encourage labor union expansion. The identification of picketing with free speech helped to extend this policy to state labor legislation. Even though the doctrine clearly applied to the acts of Congress, as well as to the acts of the state legislatures, it is unlikely that the Court expected it to interfere with any future Federal action. However, the Federal policy toward labor unions was modified to some extent by the Taft-Hartley Act. That act prohibits efforts to unseat a certified bargaining agent by a union which has lost an election. It also outlaws jurisdictional strikes in sweeping terms and makes any effort to force an employer or self-employed person to join a union an unfair labor practice. Picketing is almost always involved in union activities designed to accomplish these forbidden objectives.

If picketing is constitutionally protected free speech, serious doubts may be raised as to the constitutionality of these provisions of the Taft-Hartley Act, as well as of the state regulations mentioned. The decisions of the Supreme Court which have been handed down since the Thornhill case shed little light on the constitutionality of specific regulations, but a trend is clearly evident which should eliminate most of the doubt.

Limitation of the Doctrine

From the very first the Thornhill doctrine has plagued the Court. A perusal of the cases will show that even though the Court has never expressly overruled it, the broad outlines of the doctrine have been cut and battered almost beyond recognition. In 1941 the Supreme Court handed down two picketing decisions on the same day. In the first of these, American Federation of Labor v. Swing,[6] it held that the State of Illinois could not constitutionally enjoin stranger-picketing under its common-law doctrine that such picketing was unlawful. Swing operated a nonunion beauty parlor. His shop was picketed after the union failed in an attempt to unionize it. He sought and obtained an injunction against the picketing. The injunction was set aside because it deprived the union of free speech.

This decision seems to flow naturally from the doctrine of the Thornhill case. But, Justice Frankfurter, speaking for the Court, thought it necessary to show a justification for the picketing. As a basis for this justification, he pointed out that nonunion shops competed with union shops. Since this competition was likely to have some effect on the wages of union members, he felt that they had an interest sufficient to justify picketing of an employer who was not involved in a labor dispute with his own employees. Such an explanation showed a reluctance to accept the Thornhill doctrine wholeheartedly.

The second case, Milk Wagon Drivers' Union v. Meadowmoor Dairies, Inc.,[7] also came up from the Illinois

[6] American Federation of Labor v. Swing, 312 U. S. 321, 61 S. Ct. 568, 85 L. Ed. 855 (1941).

[7] Milk Wagon Drivers' Union v. Meadowmoor Dairies, Inc., 312 U. S. 287, 61 S. Ct. 552, 85 L. Ed. 836, 132 A. L. R. 1200 (1941).

court. In that case the evidence showed considerable violence along with picketing. The Illinois Supreme Court enjoined all picketing, peaceful or otherwise, on the basis that all the union activities were tinged with violence. This injunction was upheld by a majority of the court on the basis that Illinois should have the right to determine from the evidence whether or not picketing was "enmeshed in violence." The minority could see the Thornhill doctrine slipping away. They thought that the injunction should have been modified to permit "peaceful" picketing.

Three cases decided in 1942 demonstrated that the Court was receding from the broad doctrine of the Thornhill case. The first two of these arose under Wisconsin's so-called "Little Norris-LaGuardia Act." One case held that Wisconsin could restrain picketing which was carried on without a majority strike vote, as required by the Wisconsin statute. The other case held that a Wisconsin court could enjoin the picketing of homes.

The third and most important case was Carpenters & Joiners Union v. Ritter's Cafe.[8] In that case Ritter contracted for the construction of a home. The contractor used nonunion carpenters. In order to force the use of union carpenters the union picketed Ritter's cafe, which was located a mile and a half away and had no connection with the home. Although there was no dispute between Ritter and his restaurant employees, the restaurant employees' union called a strike. The Texas court held the picketing to be illegal, partly in reliance upon a state antitrust law. The United States Supreme Court refused to reverse the Texas decision. Justice Frankfurter said the injunction granted by the state court was proper because the picketed cafe had "ne nexus" with the labor dispute. Apparently he meant that the state could confine picketing to the immediate sphere of activity concerned in the dispute. The boundaries of the sphere have never been defined, but the true significance of the case is that the Court for the first time clearly recognized the state's right to regulate picketing in furtherance of a declared legislative policy. Justice Reed, dissenting, stated that "Until today, orderly regulated picketing has been within the protection of the Fourteenth Amendment."

On the same day that Ritter's case was decided, the court handed down the decision in Bakery and Pastry Drivers Union v. Wohl.[9] In this case the New York courts enjoined picketing of bakers who sold to nonunion drivers, and of customers who bought from these drivers, on the basis that no labor dispute was involved. The injunction was set aside as a denial of free speech. The opinion of the Court illustrates the confusion in the minds of the justices. Justice Jackson, speaking for the Court, said, "A state is not required to tolerate in all places and all circumstances even peaceful picketing. . . ." But he went on to say that the picketing would have little effect on persons who were not involved in the

[8] Carpenters & Joiners Union v. Ritter's Cafe, 315 U. S. 722, 62 S. Ct. 807, 86 L. Ed. 1143 (1942).

[9] Bakery & Pastry Drivers Union v. Wohl, 315 U. S. 769, 62 S. Ct. 816, 86 L. Ed. 1178 (1942).

dispute. Justice Douglas, while concurring in the result, stated, "If the opinion . . . means that a state can prohibit picketing when it is effective but may not prohibit it when it is ineffective, then I think we have made a basic departure from Thornhill v. Alabama." He also made a somewhat startling admission when he said, "Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated."

Recent Cases

Four cases decided in the past two years show clearly that the Court has reinvested the states with broad power to regulate picketing. In all four cases the power of the state to regulate even purely peaceful picketing was upheld and there was a dissenting opinion in only one case.

In 1949 the court decided Giboney v. Empire Storage & Ice Co.[10] In that case the union picketed the company to force it to agree to stop selling ice to nonunion peddlers. The company sought and obtained an injunction against the union under a Missouri antitrust law which prohibited agreements discriminating against particular customers. The Supreme Court, in a unanimous decision, held that the free speech doctrine did not overrule the state policy that restraints of trade were against the interests of the whole public.

In 1950 the Court handed down three picketing decisions on the same day. Two of these cases were very similar to the Giboney Case. In Hughes v. Superior Court of California[11] it was held that an injunction against picketing for the purpose of securing the employment of Negro clerks in proportion to the number of Negro customers did not violate the right of free speech. Here again the Court relied upon a state policy, in this instance against involuntary employment on racial lines.

In Building Service Employees International Union v. Gazzam,[12] the union picketed a hotel for the purpose of forcing the owner to sign a contract which would require his employees to join the union. The state had a "Little Norris-LaGuardia Act" which declared a public policy against coercion by an employer of his employees' choice of bargaining representatives. The Supreme Court held that picketing for a purpose which violated the public policy of the state was not protected by the Constitution.

The last case, International Brotherhood v. Hanke,[13] seems to have gone as far away from the doctrine of Thornhill v. Alabama as it is possible to go without expressly denying the validity of the doctrine. The unions picketed two used-car dealers who operated their businesses without employees. Hanke and Cline kept their

[10] Giboney v. Empire Storage & Ice Co., 336 U. S. 490, 93 L. Ed. 834, 69 S. Ct. 684 (1949).

[11] Hughes v. Superior Court of California, 94 L. Ed. 637, 70 S. Ct. —, — U. S. — (May 8, 1950).

[12] Building Service Employees International Union v. Gazzam, 94 L. Ed. 653, 70 S. St.—, — U. S. — (May 8, 1950).

[13] International Brotherhood v. Hanke, 94 L. Ed. 644, 70 S. Ct. —, — U. S. — (May 8, 1950).

establishments open nights, week ends, and holidays. The purpose of the union was to force the dealers to adopt a union shop in order to secure respect for a union-imposed limitation on business hours. Both dealers secured injunctions against the picketing and the Supreme Court of Washington sustained both injunctions. The United States Supreme Court, in a 5 to 3 decision, held that the injunctions were not denials of free speech. Justice Frankfurter, speaking for the Court, relied upon a state policy of encouraging self-employer units as a countermovement to excessive concentrations of economic power. He did not, however, make clear how such a policy was advanced by preferring nonunion shops to union shops. That policy seems to have been the only convenient peg he could find upon which to hang a decision in favor of the state regulation. Justices Black, Minton, and Reed dissented.

Some of the statements made by Justice Frankfurter in the Hughes and Hanke cases show clearly the trend that future cases are likely to take. He recognized that picketing is coercion when he said, "Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word." He also seems aware that legislative experimentation based on growing knowledge and experience is a necessity in the field of labor relations. In speaking of the state's policy of encouraging self-employer units, he said:

> We are, needless to say, fully aware of the contentious nature of these views. It is not our business even remotely to hint at agreement or disagreement with what has commended itself to the State of Washington, or even to intimate that all the relevant considerations are exposed in the conclusions reached by the Washington court. They seldom are in this field, so deceptive and opaque are the elements of these problems. That is precisely what is meant by recognizing that they are within the domain of a state's public policy. Because there is a lack of agreement as to the relevant factors and divergent interpretations of their meaning, as well as differences in assessing what is the short and what is the long view, the clash of fact and opinion should be resolved by the democratic process and not by the judicial sword.

A reading of the Hanke and Hughes cases gives the impression that Justice Frankfurter is anticipating attacks upon the Taft-Hartley Act and laying the groundwork for decisions upholding it in spite of the free speech doctrine. In the Hanke case he said, "Invalidation here would mean denial of power to the Congress as well as the forty-eight States." Unless the Court retreats from the position taken in the Hanke case, it will be simple to uphold the Taft-Hartley Act in the face of attacks based on freedom of speech.

Conclusion

To say that picketing is no longer protected by the Constitution is to take an extreme view. Since the Thornhill case has never been expressly overruled, it overhangs any attempt to regulate picketing, whether that attempt comes from Congress or from a state legisla-

ture. Even though the Court has recognized that picketing is not the legal or practical equivalent of speech, it still is of the opinion that in some situations a prohibition of picketing would violate the provisions of the Fourteenth Amendment. At least, it is clear that a statute which forbids all picketing will be declared unconstitutional unless the Court decides to overthrow the Thornhill doctrine completely. But in any situation where the state can show some justification for its policy, that policy will likely win out over any attack based on free speech. It seems to be clear that a state or that Congress has the power to control picketing as part of a comprehensive scheme for the regulation of labor activities, so long as there is no deliberate attempt to oppress the unions.

The reluctance of the Court to expressly overrule the Thornhill doctrine may indicate an intention to retain it as a weapon. Perhaps the Court will apply the doctrine only in what it considers to be extreme cases. It is likely that the application of the Thornhill doctrine will soon be more clearly outlined in cases coming up under the Taft-Hartley Act.

The Non-Stoppage Strike Plan: Discussion

Editor's note: One of the objectives of *Current Economic Comment* is to encourage discussion of important problems. We are therefore pleased to include in this issue two comments on Professor George W. Goble's provocative and timely article, "The Non-Stoppage Strike," which appeared in the August number of this journal, together with Professor Goble's rejoinders. Professor Goble's proposal has aroused considerable interest, and it is hoped that the discussion included here will highlight the issues involved

— W.M.C.

The Non-Stoppage Strike Plan

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DESPITE its long and, in the main, honorable history in the cause of collective bargaining and democracy, the strike is a costly tactic in periods of national peril; and it is hazardous at any time in industries furnishing certain vital services. Professor Goble has therefore done well to open a discussion as to realistic and fair methods of reducing its incidence. The particular program he suggests raises provocative questions, regarding both the narrow issue of the impact of the program on labor and management, and the broader issue of the conditions under which the reduction or elimination of strikes is desirable and possible in a democratic society.

The Goble Plan

Professor Goble has chosen to seek a substitute for the strike by devising an alternative voluntary method of imposing penalties on labor and management. The strike undeniably does, among other things, impose penalties; but it is doubtful that the relative severity of the penalties approximates that of the Goble non-stoppage strike plan. The latter would, it is submitted, inflict more pain on unions and workers than on management and would offer relatively little encouragement for management to settle, although some real penalties on management are provided. It would, therefore, likely not be acceptable to unions.

As one phase of the penalty program it is suggested that upon the issuance of an NLRB non-stoppage strike order "all wages and salaries of all employees of the company, from the president on down, including all representatives of management as well as all laborers represented by the union, would be ordered reduced 25 percent. . . ." Clearly, this scheme imposes grossly unequal penalties — in the degree, roughly, that 25 percent of a $50 weekly wage has a higher marginal utility than 25 percent of a $750 weekly salary.

It is further suggested that all profits be placed in escrow and forfeited if no settlement is reached within ninety days. To assume that this device would significantly induce large corporate management to settle is to ignore the realities of modern industrial politics and economics. The company would remain a going concern, continuing to supply its customers and to retain its markets and good will. It is by the nullification of these advantages that a real strike effects its most telling blows; for without them the company risks long-term losses in economic power and consequent long-run diminution in the prestige and power of its managers. It is true that the stockholders might lose dividends under this plan, as they may in a real strike; but the findings of Berle and Means and the TNEC investigation long ago erased any notion that in an era of separation of industrial ownership from control the stockholders' immediate profits are impressive determinants of corporate policy. Professor Goble suggests at one point that "the failure of a company to pay its regular dividends will immediately generate strong pressure among all stockholders for an early strike settlement"; but it seems more likely that the small minority of stockholders with any real voice in policy will place their concept of the long-run interests of management above immediate profits, which means that the voice is not likely to cry for a policy of yielding to labor. The profit consideration might, it is true, be more important in the case of small companies; but strikes in these companies do not normally raise crucial national problems or urgently call for alternatives.

In short, then, the curb on profits is likely to be small inducement for many managements to settle so long as the business is permitted to continue as a going concern; and the 25-percent reduction in managerial salaries constitutes under these conditions only a fraction of the penalty imposed on labor through the 25-percent cut in wages and the abolition of labor's power to inflict serious injury on the company's economic position. It should also be noted that organizational strikes could not be affected by the plan. Although both sides are penalized, neither will feel as much pressure to settle as is the case in a real strike, and management will normally feel less pressure than labor.

The administrative and accounting task assigned to the NLRB would not be easy in the case of strikes which were not settled within 90 days, despite the device Professor Goble suggests for accomplishing this end. One foresees endless litigation over the questions whether accounting procedures have been changed so as to affect net earnings; whether the work force has been reduced more than is justified by the seasonal or fluctuating character of the business; and whether payments to officers or employees were subterfuge strike benefits. It may also be noted that the determination of questions like these is quite a different administrative function from those now performed by the Board and would call for the development of a new staff and appropriate operating policies.

Strikes are More than Penalties

More fundamental than any of these considerations, however, is the issue as

to whether Professor Goble asked the right question in the first place in seeking merely an alternative means of imposing penalties on the parties. Strikes do far more than impose penalties and have a much wider social function. Under certain circumstances they may promote unity and enthusiasm among the union membership. In contrast, we would have under the Goble plan a suggestion by the union leader that the workers petition the NLRB to reduce their wages 25 percent, starting next week, on condition that managerial salaries and net earnings be cut. This is not the sort of proposition likely to create a fighting spirit or the morale necessary to continue to sacrifice immediate interests for long-run gains. Meetings to stir up enthusiasm and support might well fall flat if held after a day of work and prior to returning to work the next day for an employer against whom there is a grievance. Nor is the union under these conditions likely to be able to dramatize its position so as to secure support outside the ranks of the strikers: other union people, customers, and general public sympathy likely to bring pressure on the employer or political support for the union. Strikes have also on occasion served the interests of management in constructive fashion. They have cleared the air of ancient issues and forced management to give serious consideration to grievances and attitudes of the workers, resulting in a more wholesome future relationship.

Strikes are more than penalties, also, in the sense that they are designed to force management (or labor, in the case of a lockout) to reassess the relative bargaining power of the parties, with a view to granting *more* benefits than it has done in the past. It is therefore somewhat beside the point for Professor Goble to devise a plan which is intended to maintain the same relative bargaining positions. Strikes or lockouts, from this point of view, translate static or potential bargaining power into dynamic or realized bargaining power. The initiator assumes, or at least hopes, that realized bargaining power will prove stronger than it had been thought to be in the past.

Strikes are, in any case, a form of free expression which labor will not, and should not be asked to, forego lightly. In an age of collective action[1] the right to strike, at least by virtue of the social and legal impracticability of abolishing it as well as of the degree of its public acceptance, comes as close to being a "natural right" as those listed in the Federal Constitution's Bill of Rights. It is a serious curtailment of freedom to deny the right to quit work collectively to a group of men and women whose collective labor is a *sine qua non* of private profits. Professor Goble has not, of course, recommended curtailment of this right; but he does appear to make the assumption that under any circumstances the strike is per se socially undesirable. It is, on the contrary, so valuable a freedom to a group, who, with their families, constitute the majority of the population, that it cannot be assumed to be incompatible with the public interest except when a national emergency makes full production essential. Under any other circumstances — and probably even un-

[1] Cf. John R. Commons' posthumously published work, *The Economics of Collective Action* (New York: Macmillan, 1950).

der these — wildcat strikes would be inevitable, even in the unlikely event that a union were to accept the non-stoppage strike plan.

The fact is that as labor's rights and the labor-management relationship are increasingly fixed or guided by government — as they are in time of emergency, particularly — the strike is not so effective an instrument for achieving goals as it was when only the employer had to be considered. It is this phenomenon that suggests the general character of a constructive alternative, for government intervention is most far-reaching exactly when the need to eliminate strikes is greatest. In a period of national emergency strikes will be drastically and wholesomely reduced in incidence only if labor is accorded an alternative method, not of inflicting penalties on management, but of constructively securing the position in relation to management and other interests which it might have gained anyway through the direct exercise of its economic and political power.

The problem in such a period — and to a lesser degree at all times — is to elicit the political support of outside groups, for it is through the political process that the vital decisions are made. This was the theory of the War Labor Board in both world wars, but particularly in World War II. To the degree that such a board, consisting of men with insight and awareness of the real problems and grievances of labor and management, can make decisions which do not seem to the parties out of line with their respective power positions, the right to strike will voluntarily be sacrificed. The mediation and arbitration procedure of the Atomic Energy Act is another example of this approach, utilized in peacetime because of the vital nature of the industry.

To state this thesis in another way, labor and management may choose to use the governmental arena rather than direct economic conflict to gain their ends if institutions are provided for accomplishing this function. By establishing an administrative agency which maintains continuous surveillance over the problems of particular unions and employers as well as over more general policies, government will very strongly be encouraging the parties to utilize this arena rather than the strike. For the strike against an employer cannot accomplish much in these circumstances. Other pressure groups — farm interests, or consumer interests, for example — will in any case use their political power to influence the character of the labor-management relationship if this relationship adversely affects them. The public interest both in maintaining full production and in respecting the interests of the parties is thus preserved; for in this arena all interested parties may bring their pressures to bear and be considered.

Rejoinder to Professor Edelman

George W. Goble
Professor of Law, University of Illinois

Professor Edelman's criticisms of the non-stoppage strike proposal show that he is a keen student not only of labor problems but of our democratic processes. What he has to say on this subject is therefore entitled to careful consideration. Nevertheless, some of the comments which he makes seem to me open to serious question. I shall attempt to show why.

I

Professor Edelman believes that the non-stoppage strike "would inflict more pain on unions and workers than on management. . . . Clearly this scheme," he says, "imposes grossly unequal penalties—in the degree, roughly, that 25 percent of a $50 weekly wage has a higher marginal utility than 25 percent of a $750 weekly salary." But the issue is, how does this inequality in penalties compare with that imposed by the traditional strike? Under it the $50 a week worker gets nothing and the $750 a week manager continues to get his $750. Under the non-stoppage strike plan, the worker goes from nothing up to 75 percent of his normal wages, and management goes from 100 percent of salary down to 75 percent of salary. Thus it is seen that on the matter of wages and salary the advantages to labor in the non-stoppage strike over the conventional strike are overwhelming. But Professor Edelman in this argument no doubt has in mind the over-all setup rather than wages alone, for he contends that since under the proposed plan the company continues as a "going concern," and retains its "markets and good will," it does not run the risk of "long-term losses in economic power and consequent long-run diminution in the prestige and power of its managers," as it does under the conventional strike. This is a tremendous advantage, argues Professor Edelman, which the company has over labor in the proposed plan, but does not have in the conventional strike. This may be true. But the main question is: Is the advantage which labor has on the wage feature of the plan a fair and reasonable offset to the advantage which the company has on the continued-operation feature? I believe that it is.

Professor Edelman's argument on this point is a boomerang. Not only is there the fact that only a strong company can pay good wages, but now that employer-financed pension systems are becoming common, the employees who have no security other than their pensions are more dependent on the future strength of the company than a managerial staff who usually have other security. A strike so destructive as to injure the company structurally would jeopardize the maintenance of the pension fund, and the payment of the pension obligations. A smart union is not going to kill the goose that lays the golden egg. And smart management knows that. The bargaining advantage surrendered here by labor under the non-stoppage strike plan is, I think, a much weaker power than Professor Edelman supposes it to be.

However, if I am in error on the relative advantages given to labor and management under the plan, the imbalance can be corrected by increasing the percentage of wages which labor receives during the continuance of a non-stoppage strike, and decreasing the percentage of salaries which management receives. As suggested in the original article, this balancing percentage item will have to be worked out through experience.

II

However, says Professor Edelman, a more "fundamental consideration" than the question of reciprocal penalties is the "social function" served by the strike, in promoting unity, enthusiasm, fighting spirit and morale, and in enabling the union to "dramatize its position." This raises the important question as to whether we are to encourage the continuation of the tribal concept of unionism (the war paint, the war dance, the feathered headdress, the tom-tom) or to promote the concept of unity, cooperation, and responsibility within the industrial unit. I do not mean that we can or should ignore the power conflict between management and labor, but that we should attempt to put the conflict on an economic level rather than keep it on a social level. Long strides have been made in this direction in many industries.[1] Many unions have abandoned the old ideology. Others would abandon it, if they were offered an alternative weapon to the strike. Some probably never will think in any other terms than those of warfare. That, of course, is their privilege. But why not make available to industries that want to use it the more amicable non-stoppage strike procedure?

And, too, it is difficult to reconcile Professor Edelman's position that this "social function" of the strike is "fundamental" with his proposal of governmental administrative "surveillance" as an alternative to the strike. On this he says, " . . . labor and management may choose to use the governmental arena rather than direct economic conflict to gain their ends if institutions are provided for accomplishing this function." But the "social function" of the strike which he regards as "fundamental" would suffer the same tragic fate if this procedure were adopted as it would with the adoption of the non-stoppage strike plan. And further, if it is desirable that administrative "institutions" be made available for the avoidance of economic conflict, why is it not desirable that a collective bargaining device be made available for the same purpose?

III

Professor Edelman is right in saying that labor should not be asked to forego the strike lightly. I ask only that it be waived in return for something which labor must first agree is better — only that an alternative to the strike be provided if its use is desired. Professor Edelman says that I "appear to make the assumption that under any circumstances the strike is per se socially undesirable." The undesirability of anything is relative. The strike is desirable

[1] See *Human Relations in Modern Business*, sponsored by American business leaders (New York: Prentice-Hall, Inc., 1949).

if labor has no other economic weapon with which to combat management. It is undesirable if the law provides an alternative method equally as good, which does not harm the public.

IV

I agree with Professor Edelman that labor problems increasingly may find their way into the "governmental arena." But if this is found to be desirable I see nothing incompatible in that and the proposed non-stoppage strike. It seems to me that collective bargaining should be encouraged to handle the problem in so far as it can. Beyond that the "arena of government" should be kept open.

V

It is further contended that there will be difficulties of administration and a flood of litigation if the proposed plan is adopted. That, of course, is nearly always true when novel plans are put into effect or new institutions set up. That is the price of change. The question is: Is the change worth it? We would have been spared volumes of litigation if we had never adopted the Constitution. To exchange strikes for a reasonable amount of litigation would, I think, be a good trade. It would also be one way to accomplish Professor Edelman's objective of transferring "economic conflict" to the "governmental arena."

The Non-Stoppage Strike — A Reply

W. G. Broehl

Assistant Professor of Business Administration, Bradley University

One of the most stimulating and provocative propositions in recent months is that contained in Professor Goble's article "The Non-Stoppage Strike" in the August, 1950, issue of this publication. Our nation is faced with the immediate necessity of mobilizing its resources in all fields for the defeat of totalitarian aggression and will increasingly become aware that prolonged work stoppages are inimical to such mobilization. Professor Goble's proposal for a solution of industrial strife that would preserve the traditional "power" mechanisms of both labor and management, yet eliminate the vast economic losses deplored throughout the years by labor and management alike, therefore assumes a proportion that merits careful analysis. That the non-stoppage strike could be a workable and practical successor to the present-day strike I have no doubt. However, the methods of implementation advanced by Professor Goble appear to me subject to some question.

Briefly, Professor Goble proposes that the National Labor Relations Act be amended to provide that a voluntary non-stoppage strike agreement could be made between an employer and his employees. This agreement, while precluding a work stoppage as such, would provide economic coercion of both parties by requiring the segregation during the non-stoppage strike of both the company's "net earnings" and 25 percent of all wages and salaries, both of

management and labor. These funds would be deposited with the National Labor Relations Board, and, if agreement was reached within 90 days, would be returned in full to the parties. If no agreement was reached in this 90-day period, all funds would be forfeited to the United States government. This process would continue through consecutive 90-day periods until an agreement was reached. Violations of the agreement by either party would be subject to a charge by the Board of unfair labor practice.

Alternative Proposals

In the first place, I question whether this procedure should logically be incorporated as part of the nation's labor law. Many people would deplore such a law as additional government intervention in collective bargaining. I cannot subscribe to the one-sentence dismissal of this point by Professor Goble ("On the contrary, the plan widens the scope of collective bargaining by making it possible for the parties themselves to agree to a substitute for the strike") for, while it is true that the initial decision is reached by the parties themselves, the administration is centered in the hands of the NLRB. Professor Goble conceives that the procedure would begin with an application to the NLRB by either party for a non-stoppage strike order. The NLRB would then issue an order for work to continue and would subsequently be required to analyze in some detail the books of the company to determine the proper "net earnings," wages, and salaries for segregation. In view of the traditional backlog of cases on the NLRB docket, I foresee many delays and frictions before these basic steps could be completed. Would it not be simpler, therefore, to provide essentially the same plan of earnings and wage segregation, but handled through the trust department of a bank? The nominal fees for such service could be shared equally by the parties. This method, of course, would eliminate the possible advantage of the use of an unfair-labor-practice charges as a policing mechanism, but, inasmuch as the violation of such an agreement would open the violator to a breach of contract suit, I see little loss in the unavailability of the unfair-labor-practice charge.

And, in place of the rather complicated and controversial calculation of "net earnings" proposed by Professor Goble, it might be more practical to provide in the original agreement an arbitrary per diem charge on the company, probably based on a prorata calculation of the previous year's net earnings. Careful bargaining by the parties could establish a sum that would eliminate a great deal of controversy during the strike period itself, when feelings are apt to be less susceptible to calm reasoning.

The 90-Day Period

Next, I am troubled by Professor Goble's adherence to a 90-day period, with forfeiture on the 91st day but full repayment to the parties on the 90th day. Professor Goble states that ". . . the 90-day clause makes possible the building up of a heavy penalty which will drop suddenly on the parties on the 91st day . . ." and "This condition introduces a powerful psychological factor in favor of settlement

. . ." and, further, that "A day-by-day or week-by-week loss, instead of the 90-day built-up forfeiture, would not carry this advantage." This reasoning, of course, assumes that the situation would be increasingly favorable toward solution up to the 90th day. But what happens if the period passes and forfeiture occurs? For all practical purposes, the situation has reverted to the "1st" day, and pressure for solution will not again be favorable until near the next "90th" day. While the great majority of negotiations could be concluded in a 90-day period, it is entirely within the realm of reasoning to conceive of an unforeseen situation's developing that would preclude such early settlement.

In turn, I am not sure that the "all or nothing" method of a fixed date is actually the answer. It might be more feasible to provide, in the case of a non-stoppage strike, the immediate and continued forfeiture of 25 percent of the wages and salaries and the "net earnings," paid either to the government, as Professor Goble proposes, or, as has been utilized in the field of the check-off, to a local or national charity. This would progressively stimulate settlement by penalizing both parties financially each day the strike continued, rather than encourage many bargaining sessions culminating in intensive round-the-clock bargaining near the forfeiture date.

There are other questions that would seem to necessitate a more detailed analysis, such as (1) the setting of a proper percentage reduction of wages, salaries, and calculation of "net earnings" to insure proper equality of coercive power; (2) the possible necessity of certain exemptions from forfeiture for employees not affected by the strike; and (3) the problem of incipient slowdown by the employees during the strike, which I believe should be carefully covered in the initial agreement. These points, however, could and should be solved in the collective bargaining process itself.

In my thinking, the inherent problems in attempting to incorporate such a far-reaching proposal as Professor Goble's in the body of national labor law would seem insurmountable, at least at the present time. But I recognize in Professor Goble's over-all idea an immediately practical application through voluntary incorporation of a non-stoppage strike clause, privately administered, in individual labor agreements. There seems little necessity of ever formally integrating through law the philosophy of the non-stoppage strike, for, if determined and administered through collective bargaining, it could be a dynamic link in the continuance of the traditional practice of American labor and business to determine through free collective bargaining the basic principles of industrial cooperation.

Rejoinder to Professor Broehl

GEORGE W. GOBLE
Professor of Law, University of Illinois

I HAVE READ with much interest Professor Broehl's constructive comments on my article and am pleased to know that he endorses the main features of the plan. He has expertly pointed out some of the debatable elements in the proposal, and it is possible that the incorporation of some of his suggestions would improve the plan. I should like to comment upon three points raised by him.

I

He first questions whether the non-stoppage strike procedure should be incorporated into "the nation's labor law." The main reason, in my judgment, why a statute is required is that by the common law a contract providing for the imposition of a penalty is unenforceable. People cannot set up a system of criminal law by contract. For example, if A contracts to sell B a car and agrees that if the car is not delivered at the specified time A shall pay to B as a penalty the sum of $10,000, the penalty provision is invalid. Professor Broehl suggests that, without statutory authority, the parties could agree to the use of a trust department of a bank as the depository of the funds subject to forfeiture. But suppose that, after making such an agreement, the company refused to pay the funds to the bank, and the union sued for breach of contract, or suppose the union sought an injunction against the payroll deduction, what would the court hold in the face of the argument that this was a contract involving a penalty? It is of course possible that unique factors could be found in the situation which would warrant the court in sustaining the contract. But it is probable that the court would follow the common-law principle and hold the contract unenforceable. I see no need of risking the failure of the entire plan because of the use of a contract of doubtful validity. And I believe the parties would be more likely to enter into the arrangement, and would feel more secure in their new relation, if the agreement were given statutory sanction. To do this the statute need only grant authority to the parties to incorporate such a clause in their collective bargaining contract, and provide that it shall be valid. This simple authorization need not necessarily increase the power of the Labor Board to intervene in the collective bargaining procedure.

However, it is my belief that the plan would have a much better chance of success if the statute went further and granted a few narrowly defined powers to the Labor Board. Among them should be the authority (1) to determine the day on which a non-stoppage strike began; (2) to determine the day on which it ended; (3) to require the submission to the Board of the company's records showing net earnings of the last preceding year; (4) to require the submission of records showing its payroll; (5) from these records, to determine the amounts to

be paid weekly to the Board; (6) to act as custodian of such amounts until settlement; (7) to declare when a forfeiture has occurred, and to pay forfeited amounts to the government; (8) to repay unforfeited amounts to the parties; and (9) to hear and pass upon complaints of contract violations during the period of the controversy. These are matters that could very easily form the basis of a dispute during the period of negotiation, and it is important that provision be made for their authoritative settlement. They are also of such a nature that an ordinary action for breach of the contract would not provide an adequate remedy.

The determination of the past year's net earnings need not involve any visitation of the plant or examination of books by the Board's accountants. The company would simply be required to make a return to the Board under oath, in the same manner that it makes an income tax return. The net income item in the tax return itself minus the amount of taxes paid might well be accepted as a satisfactory figure for this purpose. It would be only in the rare case of suspected fraud (as in income tax cases) that an examination of books would be necessary.

I share Professor Broehl's feeling that collective bargaining should be kept as free as possible from governmental interference and that the Labor Board's administration should be kept to a minimum. But we don't want to lose sight of the fact that collective bargaining itself has been made a reality only by legislation. And we should not let our general opposition to bureaucratic power prevent our making use of that device at those points in our body politic where it is clearly needed. It seems to me that the strike problem is so big that its complete control is beyond the power of individuals themselves. It is at this point, if anywhere, that there is need of governmental assistance.

II

Professor Broehl suggests (though this is one of his minor points) that the penalty might be paid to a charity rather than to the government. I would raise three objections to this.

(1) The selection of the charity would present another point of possible friction between the parties, and that, too, on a matter irrelevant to the management-labor relation.

(2) It would create a party interested in the prolongation of the strike rather than in its settlement.

(3) The public has long suffered from strikes to which it was not a party, and for which it was not responsible. Making forfeitures payable to the government (perhaps to a fund to be used for the discharge of the public debt) would constitute a small but just compensation for this loss, thus benefiting everybody.

III

Professor Broehl is inclined to believe that an "immediate and continued" day-by-day forfeiture would be more feasible than the heavy built-up penalty which would not fall on the parties until the 91st day. In this he may be right. It seems to me, however, that the delayed "sudden-death" penalty introduces a psychological factor better

calculated to encourage a settlement than the gradual day-by-day loss. Under the delayed-loss plan, settlement is increasingly encouraged because of the constantly approaching imminence of the loss and because an opportunity is furnished to avoid that loss by settlement. Each party increasingly realizes that by reaching agreement before the deadline, he will not only save himself from future forfeitures, but will recoup his past losses. The day-by-day procedure offers no comparable reward for settlement.

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